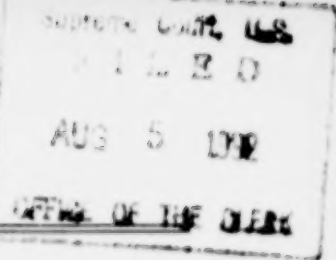


No. 91-1600



**In the
Supreme Court of the United States**

OCTOBER TERM, 1992

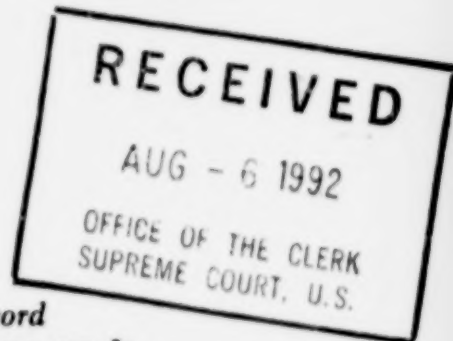
HAZEN PAPER COMPANY, *et al.*,
PETITIONERS,

v.

WALTER F. BIGGINS,
RESPONDENT.

**On Writ of Certiorari to the United States Court of Appeals
for the First Circuit**

JOINT APPENDIX



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**Petition for Writ of Certiorari Filed April 2, 1992;
Certiorari Granted June 22, 1992**

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* Appendix to Petition for Writ of Certiorari

DOCKET ENTRIES

Biggins v. The Hazen Paper Company, et al., Civ. No. 88-0025
(U.S. District Court for the District of Massachusetts)

[CAPTION OMITTED]

| 1988 | NR | PROCEEDINGS |
|-----------|----|---|
| Feb. 16 | 01 | COMPLAINT filed; summonses issued; CF and LR 10 to Cl. |
| Mar. 10 | | Summons returned w/s/o Defts. The Hazen Paper Company and Thomas Hazen on March 2, 1988 and Deft. Robert Hazen on February 27, 1988. |
| Mar. 15 | 02 | Appearance of Richard D. Hayes for Ds. filed; CS. |
| | 03 | Ds' Motion for Adm. of Patrick McGinley Pro Hac Vice filed; CS. |
| Mar. 18 | 04 | P's Notices of Depositions of Thomas Hazen and Robert Hazen filed; CS. |
| | 05 | Ds' ANSWER filed; CS. |
| Mar. 21 | | REF. TO MAG. FOR RULE 16 CONFERENCE. |
| **Mar. 17 | | FREEDMAN, C.J.: #03 ALLOWED; cc/cl. |
| June 1 | 06 | PONSOR, USM: PRETRIAL SCHEDULING ORDER entered. P's Motion to Amend Complaint to be filed by June 17, 1988. Defts. have 2 weeks after receipt of the motion to file their opposition, if any. DISCOVERY to Close December 21, 1988. |
| June 15 | 07 | P's Notice of Deposition of Frederick L. Sullivan filed; CS; S.I. |
| June 17 | 08 | P's Motion to Amend Complaint filed w/Brief; CS. |
| July 1 | 09 | Ds' Opposition to #08 filed; CS. |
| July 6 | | PONSOR, USM: #08 ALLOWED; amended complaint to be filed within 20 days. |
| July 26 | 10 | AMENDED COMPLAINT filed; CS. |

| 1988 | NR | PROCEEDINGS |
|----------|----|--|
| Aug. 3 | 11 | Ds' ANSWER to AMENDED COMPLAINT filed; CS. |
| Aug. 12 | 12 | Ds' Notice of Deposition of Pl. filed; CS. |
| | 13 | Ds' Motion to Compel Discovery filed w/Cert. of Consultation; CS. |
| Aug. 30 | | PONSOR, USM: #13 ALLOWED, without opposition; suppl. responses to be served by September 23, 1988. |
| Sept. 23 | 14 | P's Motion for Reconsideration of allowance of #13 filed; CS. |
| Sept. 28 | 15 | D's Opposition to #14 filed; CS. |
| | 16 | P's Motion for Leave to File Memorandum in Support of #14 filed; CS. |
| Oct. 3 | | PONSOR, USM: #16 ALLOWED. |
| | 17 | P's Memorandum in Support of #14 filed; CS. PONSOR, USM: #14 is DENIED; suppl. responses to be served by October 28, 1988. |
| Nov. 16 | 18 | Ds' Motion to Enforce Sanctions and for Fees filed w/Memorandum; CS. |
| Dec. 21 | 19 | Stipulated P's Motion to Ext. Discovery to January 31, 1989 for Hutchinson dep. filed; CS. |
| Dec. 22 | | PONSOR, USM: #19 ALLOWED. |
| Dec. 23 | 20 | P's Motion for Leave to Serve Addtl. Ints. filed; CS. |
| 1989 | | |
| Jan. 3 | 21 | Ds' Opposition to #20 filed; CS. |
| Jan. 4 | | PONSOR, USM: #20 DENIED. |
| Jan. 6 | 22 | P's Motion to Compel Production filed w/Cert. of Consultation; CS. |
| Jan. 13 | 23 | P's Notice of Deposition of Robert Hutchinson filed; CS. |
| Jan. 18 | 24 | Ds' Resp. to #22 filed; CS. |
| Jan. 19 | | PONSOR, USM: #22 DENIED, on condition that Def. produce suppl. documents within 30 days. |

| 1989 | NR | PROCEEDINGS |
|---------|----|---|
| Jan. 31 | 25 | P's Motion to Reconsider denial of #22 and to seek to renew filed; CS. |
| Feb. 9 | 26 | Ds' Response to #25 filed. CS. |
| Feb. 10 | | PONSOR, USM: #25 DENIED. |
| Feb. 22 | 27 | Parties Stipulation and Order filed. |
| Feb. 23 | 28 | PONSOR, USM: FURTHER PRETRIAL SCHEDULING ORDER entered. ALL DISCOVERY IS CLOSED; with the exception of motions to compel, and expert discovery. PONSOR, USM: #27 ALLOWED. |
| Feb. 27 | 29 | P's Motion to Reconsider the Magistrate's Denial of #25 filed w/Brief; CS. |
| Mar. 6 | 30 | Ds' Resp. to #29 filed; CS. |
| Mar. 9 | 31 | P's Motion for Leave to File Reply Brief filed; CS. |
| Mar. 30 | | FREEDMAN, C.J.: #31 ALLOWED; cc/cl. |
| | 32 | P's Reply Brief filed; CS. |
| May 11 | 33 | FREEDMAN, C.J.: MEMORANDUM AND ORDER entered. P's Motion to Reconsider the Magistrate's Discovery order is DENIED; cc/cl. |
| May 26 | 34 | P's Notice of Deposition of Lester Halpern filed; CS. Subpoena issued. |
| May 31 | 35 | P's Renewed Motion to Compel Production and for Sanctions filed; CS. |
| June 8 | 36 | P's Motion to Compel Compliance with Subpoena and for Sanctions filed; CS. |
| | 37 | Ds' Resp. to #35 filed; CS. |
| June 15 | 38 | P's Brief in Support of #35 filed w/Affidavit of Maurice M. Cahillane; CS. |
| June 21 | 39 | Notice of Appearance of Jo-Ann W. Davis as co-counsel for Ds. Hazen Paper Company, Robert Hazen and Thomas Hazen filed; CS. |
| | 40 | Ds' Resp. to #36 filed; CS. |
| June 29 | 41 | P's Brief in Support of #36 filed; CS. |
| Aug. 16 | | PONSOR, USM: #35 DENIED, no sanctions. PONSOR, USM: #36 ALLOWED: Halpern |

| 1989 | NR | PROCEEDINGS |
|----------|----|--|
| | | deposition to be taken by September 30, 1989. DISCOVERY otherwise is CLOSED; no sanctions. |
| Aug. 23 | 42 | Ds' Motion to Ext. Time to Complete Discovery of Expert Witness filed w/Cert. of Consultation; CS. |
| Sept. 1 | 43 | P's Opposition to #42 filed; CS. PONSOR, USM: #42 ALLOWED: EXPERT DISCOVERY ext. to October 31, 1989. |
| Sept. 11 | 44 | PONSOR, USM: (CLERK'S NOTES) Status Conference held. Further Scheduling Order to issue. Final Pretrial Conference set for February 13, 1990 at 3:00 P.M. |
| Sept. 12 | 45 | PONSOR, USM: PRETRIAL SCHEDULING ORDER entered. Plft. has until January 31, 1990 to depose experts. Counsel to appear for Final Pretrial Conference on February 13, 1990 at 3:00 P.M. This matter is set for Jury Trial before Chief Judge Frank Freedman on April 24, 1990. |
| 1990 | | |
| Jan. 19 | 46 | P's Notice of Deposition of Charles E. Sullivan filed; CS; S.I. |
| Feb. 8 | 47 | PONSOR, USM: Notice of Pretrial Conference on March 2, 1990 at 2:00 P.M. entered by the Court. |
| | 48 | Ds' Pretrial Memorandum filed; CS. |
| | 49 | Notice of Appearance of Charles S. Cohen for the Plft. filed; CS. |
| Feb. 27 | 50 | Ds' Amended Pretrial Memorandum filed; CS. |
| Feb. 28 | 51 | P's Pretrial Memorandum filed; CS. |
| Mar. 2 | 52 | PONSOR, USM: (CLERK'S NOTES) PRETRIAL CONFERENCE held. |
| Mar. 5 | 53 | PONSOR, USM: FURTHER SCHEDULING ORDER entered: Ds' motion for S/J due March 23, 1990; P's opposition due April 13, 1990; mo- |

| 1990 | NR | PROCEEDINGS |
|----------|----|--|
| | | tion will then be taken under advisement; JURY TRIAL — April 24, 1990. |
| Mar. 9 | 54 | D's Motion to Ext. Trial Date filed w/Hazen and McGinley Affidavits; CS. |
| | 55 | Affidavit of Jo-Ann W. Davis in Support of #54 filed. |
| Mar. 15 | 56 | P's Opposition to #54 filed w/Biggins Affidavit; CS. |
| Mar. 20 | 57 | Ds' Motion for Leave to File Brief in Excess of 20 Pgs. filed; CS. |
| Mar. 23 | | FREEDMAN, C.J.: #57 DENIED; cc/cl. The Court will consider no more than thirty (30) pages. |
| Mar. 26 | 58 | Ds' Motion for S/J filed w/LR 18 Statement and Memorandum; CS. |
| April 9 | 59 | Ds' Motion for Leave to File Reply to P's Opposition to #58 filed; CS. |
| April 12 | | FREEDMAN, C.J.: #54 ALLOWED; cc/cl. FREEDMAN, C.J.: #59 ALLOWED; cc/cl. |
| April 13 | 60 | P's Motion for Leave to File Brief in Excess of Limit filed; CS. FREEDMAN, C.J.: #60 ALLOWED; cc/cl. |
| | 61 | P's Brief in Opposition to #58 filed; CS. |
| | 62 | P's Statement under LR 18 in Support of #61 filed; CS. |
| | 63 | P's Exhibits in Support of #61 filed; CS. |
| April 17 | 64 | Ds' Amended Motion to File a Brief in Reply to #61 filed; CS. |
| May 11 | | FREEDMAN, C.J.: #64 ALLOWED; cc/cl. |
| | 65 | Ds' Brief in Reply to #61 filed; CS. |
| | 66 | Ds' Motion to have admitted all of Ds' Local Rule 18 Statements of Undisputed Facts filed; CS. |
| | 67 | Ds' Motion to Strike Portions of Affidavit of Walter Biggins accompany[ing] Local Rule 18 Statement filed; CS. |

| 1990 | NR | PROCEEDINGS |
|---------|----|--|
| May 25 | 68 | FREEDMAN, C.J.: Notice of Hearing on Defendant's Motion for S/J on June 8, 1990 at 10:00 A.M. entered by the Court; cc/cl. |
| | 69 | P's Opposition to #66 filed; CS. |
| | 70 | P's Opposition to #67 filed; CS. |
| | 71 | P's Brief in Support of ##69 and 70 filed; CS. |
| June 1 | 72 | P's Motion for Leave to File Reply Brief filed; CS. |
| June 4 | | FREEDMAN, C.J.: #72 ALLOWED; cc/cl. |
| | 73 | P's Reply Brief in Opposition to #58 filed; CS. |
| June 8 | 74 | FREEDMAN, C.J.: (CLERK'S NOTES) HEARING on D's Motion for S/J; after hearing, motion is DENIED; D's motion to strike affidavit is DENIED; D's motion for admission of LR 18 statement is DENIED. TRIAL DATE set for July 16, 1990 at 10:00 A.M. (Reporter: Mitchell) |
| July 3 | 75 | Def. Hazen Paper's Offer of Judgment in the sum of \$50,000 filed w/McGinley Affidavit; CS. |
| July 10 | 76 | Ds' Motion in Limine re Calculation of Damages by Special Master filed w/Memorandum; CS. |
| July 11 | 77 | P's Motion for View filed w/Memorandum; CS. |
| | 78 | P's Motion in Limine to Exclude Evidence of Prior Litigation filed w/Memorandum; CS. |
| | 79 | P's Motion in Limine to Exclude Evidence of Prior Employment filed w/Memorandum; CS. |
| July 13 | 80 | P's Opposition to #76 filed w/Memorandum; CS. |
| | | FREEDMAN, C.J.: #77 DENIED; cc/cl. |
| | 81 | D's Opposition to #78 filed. CS. |
| | 82 | D's Motion to Quash Subpoenas to Shirley Rossmeissel, Dennis Badger and Lester Halpern filed. CS. |

| 1990 | NR | PROCEEDINGS |
|---------|----|--|
| July 16 | 83 | Ds' Proposed Jury Instructions Re: measure of damages filed; CS. |
| | 84 | Ds' Req. for the Submission of Special Ints. to the Jury re: proposed jury instructions filed; CS. |
| | 85 | Ds' Proposed Jury Instructions re: liability filed; CS. |
| | 86 | P's Proposed Jury Instructions filed. |
| | 87 | Jury Questionnaire filed. |
| | 88 | FREEDMAN, C.J.: First Day — Case called for jury trial. Court rules on pre-trial motions. Jury of six and two impaneled and sworn. P's opening statement. Ds' opening statement. Witnesses not present but subpoenaed should appear on July 17, 1990. Court recesses at 3:30 P.M. until July 17, 1990 at 10:00 A.M. (Mitchell) |
| July 17 | | FREEDMAN, C.J.: 2nd Day — P's evidence continues. Court recesses at 4:00 P.M. until 10:00 A.M. on July 18, 1990. (Mitchell) |
| July 18 | 89 | Ds' Motion for Directed Verdict filed; CS. |
| | | FREEDMAN, C.J.: 3rd Day — P's evidence continues. Pltf. rests. Defts. move for directed verdict. Motion denied. Defts. evidence begins. Court recesses at 4:00 P.M. until July 19, 1990 at 10:00 A.M. (Mitchell) |
| July 19 | | FREEDMAN, C.J.: 4th Day — Defts. evidence continues. Defts. rest. Defts. renew motion for directed verdict. Motion denied. Court recesses at 3:15 P.M. until 9:30 A.M., July 20, 1990. (Mitchell) |
| July 20 | | FREEDMAN, C.J.: 5th Day — Closing arguments of counsel. Court's instructions on the law. Counsel's objections to Court's instructions. Jury begins deliberations at 11:54 A.M. Court re-instructs jury on age discrimination claim at 1:45 P.M. Jury returns verdict at 3:30 |

| | | |
|---------|----|---|
| 1990 | NR | PROCEEDINGS |
| | | P.M. Jury finds for the Plaintiff on all claims and awards total damages of \$1,242,772.00. Jury discharged. Exhibits returned to counsel. |
| | 90 | Special Verdict Questions filed. |
| July 26 | 91 | P's Motion to Assess Liquidated Damages in Calculation of Judgment filed w/Memorandum. CS. |
| July 31 | 92 | Ds' Opposition to #91 filed; CS. |
| Aug. 7 | 93 | P's Motion for Leave to File Reply Brief filed; CS. |
| Aug. 9 | | FREEDMAN, C.J.: #93 ALLOWED; cc/cl. |
| | 94 | P's Reply Brief to #92 filed; CS. |
| Aug. 14 | 95 | D's Motion for Leave to File Reply Brief in Opposition to #91 filed; CS. |
| Aug. 16 | | FREEDMAN, C.J.: #95 ALLOWED. cc/cl. |
| | 96 | D's Reply Brief filed. CS |
| Aug. 24 | 97 | FREEDMAN, C.J.: MEMORANDUM AND ORDER entered. The Court GRANTS Plaintiff's Motion for Liquidated Damages in the sum of \$560,775.00. The Court ORDERS the clerk to enter judgment in favor of plaintiff consistent with the jury's verdict and today's Memorandum and Order. The Clerk shall allot no interest on the ADEA awards; cc/cl. |
| Aug. 27 | 98 | JUDGMENT for the Plaintiff on his claim of age discrimination with damages awarded in the amount of \$560,775.00. JUDGMENT for the Plaintiff with liquidated damages awarded by the Court of \$560,775.00, based on the jury's finding of "Willfulness". JUDGMENT for the Plaintiff on his claim under ERISA with damages awarded in the amount of \$100,000.00. JUDGMENT for the Plaintiff on his claim of wrongful discharge and fraud with damages awarded in the amount of \$315,099.00. |

| | | |
|----------|-----|--|
| 1990 | NR | PROCEEDINGS |
| | | JUDGMENT for the Plaintiff on his claim of interference with his civil rights under Massachusetts Law with damages awarded in the amount of \$1.00. |
| | | JUDGMENT for the Plaintiff on his claim of breach of the employment contract with damages awarded in the amount of \$266,897.00. |
| | | INTEREST, computed at 12% on Plaintiffs' awards on his claims of wrongful discharge, fraud, state civil rights and breach of contract amounts to \$176,703,84, making a total award on these claims of \$758,699.84. |
| | | INTEREST, computed at 7.88%, on plaintiff's claim under ERISA, amounts to \$19,937.51, making a total award on this claim of \$119,937.51. |
| | | JUDGMENT for the Defendants on Plaintiff's request for a declaratory Judgment and his claim of conversion entered; cc/cl. |
| Aug. 31 | 99 | D's Motion to Stay Execution of Judgment pending disposition of D's Motion for Judgment notwithstanding the verdict or new trial filed; CS. |
| Sept. 11 | 100 | Transcript of hearing on Motion for S/J on June 8, 1990 before Judge Freedman filed. |
| | 101 | Transcript of Jury Trial held August 20, 1990 before Judge Freedman filed. |
| Sept. 11 | 102 | Ds' Motion to Alter or Amend Judgment filed w/Memorandum; CS. |
| | 103 | Ds' Motion for Judgment Notwithstanding the Verdict or for a New Trial filed; CS. |
| | 104 | Ds' Brief in Support of Motion for a New Trial filed; CS. |
| | 105 | Ds' Brief in Support of Motion for Judgment |

| 1990 | NR | PROCEEDINGS |
|----------|-----|--|
| | | Notwithstanding the Verdict filed; CS. |
| Sept. 13 | 106 | P's Opposition to 99 filed; CS. |
| Sept. 21 | 107 | Ds' Motion to File a Brief in Reply to #106 and to Impound Financial Information attached to, and referenced in brief filed; CS. |
| Sept. 25 | | FREEDMAN, C.J.: #107 ALLOWED; cc/cl. |
| | 108 | Transcript of Trial held before Chief Judge Frank H. Freedman on July 16, 1990 at 10:00 A.M. |
| | 109 | P's Opposition to #102 filed; CS. |
| | 110 | P's Opposition to #103 (Motion for New Trial) filed; CS. |
| | 111 | P's Opposition to #103 (Judgment notwithstanding the Verdict) filed; CS. |
| Sept. 26 | 112 | D's Reply Brief in response to #106 filed; C[S]. |
| | 113 | P's Motion for Fees and Costs filed w/Egan, Sikorski, Blakesley and Biggins Affidavits; CS. |
| | 114 | P's Memorandum in Support of #113 filed; CS. |
| Oct. 1 | 115 | P's Request for Execution filed. |
| | 116 | P's Motion for Leave to file Resp. to #112 filed; CS. |
| Oct. 2 | 117 | Ds' Motion to file Briefs in Reply to #'s 110 & 111 filed; CS. |
| Oct. 5 | | FREEDMAN, C.J.: #117 ALLOWED; cc/cl. |
| Oct. 10 | 118 | Ds' Opposition to #113 filed; CS. |
| Oct. 12 | 119 | Transcript of Trial held before Chief Judge Freedman filed. |
| Oct. 17 | 120 | P's Motion for Leave to file Reply Brief to #118 filed; CS. |
| Oct. 19 | | FREEDMAN, C.J.: #120 ALLOWED; cc/cl. |
| | 121 | P's Reply to #118 filed w/Suppl. Affidavit of John J. Egan; CS. |
| Oct. 24 | 122 | Ds' Brief in Reply to #111 filed; CS. |
| | 123 | Ds' Reply to #109 filed; CS. |
| Oct. 23 | 124 | Ds' Brief in Reply to #110 filed; CS. |

| 1990 | NR | PROCEEDINGS |
|---------|-----|--|
| Oct. 25 | | PONSOR, USM: #116 ALLOWED; cc/cl. |
| | 125 | P's Resp. to #112 and in Support of #106 filed; CS. |
| Oct. 31 | 126 | D's Motion for Leave to File Resp. to #125 filed; CS. |
| Nov. 1 | | FREEDMAN, C.J.: #126 ALLOWED, cc/cl. |
| | 127 | Ds' Resp. to #125 filed; CS. |
| Nov. 2 | 128 | Transcript of trial held July 18, 1990 before Chief Judge Frank Freedman and a jury filed. |
| | 129 | P's Motion for Leave to file Reply Brief filed; CS. |
| Nov. 5 | | FREEDMAN, C.J.: #129 ALLOWED with the provision that no additional papers will be accepted on behalf of either side of the litigation; cc/cl. |
| | 130 | P's Reply Brief to #103 filed; CS. |
| Nov. 6 | 131 | FREEDMAN, C.J.: MEMORANDUM AND ORDER entered. The Court DENIES defendants' motion for an unsecured stay of execution of judgment pending disposition of defendants' post-trial motions. The Court hereby ORDERS the Clerk to issue the execution; cc/cl. |
| | | EXECUTION issued. Original to Counsel. |
| Nov. 7 | | AMENDED EXECUTION issued. Original to Counsel. |
| Nov. 16 | 132 | Transcript of Trial held before Chief Judge Frank H. Freedman filed. |
| Dec. 10 | 133 | Transcript of Trial held before Chief Judge Frank H. Freedman filed. (Opening statements) |
| 1991 | | |
| Jan. 8 | 134 | Supersedeas Bond filed. |
| Jan. 16 | 135 | Ps' Motion to Increase Supersedeas Bond filed; CS. |

1991 NR PROCEEDINGS

Jan. 17 136 P's Memorandum in Support of #135 filed; CS.

April 5 137 Ds' Opposition to #135 filed; CS.

April 5 138 FREEDMAN, C.J.: MEMORANDUM AND ORDER entered. The Court GRANTS Ds' motion for judgment notwithstanding the verdict on the question of liquidated damages and on count VIII, and DENIES the motion for judgment notwithstanding the verdict or new trial in all other respects; DENIES Ds' motion to alter or amend the judgment; GRANTS P's motion for attorney's fees in the amount of \$175,564.57, and for costs in the amount of \$9,760.07 and DENIES P's motion to increase the amount of the bond. The Clerk is hereby ORDERED to enter judgment in accordance with this Memorandum and Order, and to award prejudgment interest on the entire award at the appropriate rates; cc/cl.

April 12 139 AMENDED JUDGMENT entered pursuant to the Memorandum and Order of the Court entered on April 5, 1991 and the Special Verdict of the Jury. JUDGMENT for the Pltf. on the claim of age discrimination with damages awarded in the amount of \$560,775.00. Interest, computed at the T-Bill rate of 6.46% amounts to \$114,313.43. Total award — \$675,088.43. JUDGMENT for the Pltf. on the ERISA Claim with damages awarded in the amount of \$100,000.00. Interest, computed at the T-Bill rate of 6.46% amounts to \$20,384.77. Total award — \$120,384.77. JUDGMENT for the Pltf. on claims of wrongful discharge and fraud with damages awarded in the amount of \$315,099.00. JUDGMENT for the Pltf. on Claim of Breach of Contract

with damages awarded the amount of \$266,897.00. Interest, computed at the rate of 12% on claims of wrongful discharge, fraud and breach of contract, amounts to \$220,382.52. Total award on these claims — \$802,378.52. JUDGMENT for the Ds' on P's claim for Liquidated damages. JUDGMENT for Ds' on P's claim of Interference with Civil Rights. JUDGMENT for Ds' on P's request for Declaratory Judgment and his claim of conversion. JUDGMENT for the Pltf. with attorney's fees of \$175,564.57 and costs of \$9,760.07 entered; cc/cl.

April 24 140 Ps' Motion for Reconsideration of #138 failed; CS.

April 26 141 Ps' Memorandum in Support of #140 filed; CS.

April 26 142 Ds' Motion for Leave to Reduce Supersedeas Bond Amount filed; CS.

April 26 143 Ds' Joint Notice of Appeal filed. Copy sent to All Counsel. Filing fee of \$105.00 paid. Original File and docket sent to Appeals Clerk. Certified copy of docket and original pleadings forwarded to USCA on clerks cert. this date.

April 29 144 P's Notice of Cross Appeal filed; CS. Filing fee of \$105.00 not paid. Copy sent to all counsel. Original to Court of Appeals.

May 6 145 Ds' Opposition to #140 filed; CS.

May 7 145 Clerk's Certificate re: #144 received.

May 8 145 Filing Fee of \$105.00 paid re: #144.

May 10 145 Clerk's Cert. dated May 9, 1991 re #145 and Exhibits.

May 14 145 FREEDMAN, C.J.: #142 ALLOWED; cc/cl.

May 28 146 FREEDMAN, C.J.: MEMORANDUM AND ORDER entered. The Court DENIES P's Motion for Reconsideration (#140); cc/cl.

June 13 147 Dft's joint Notice of Appeal, filed.

June 17 147

1991 NR PROCEEDINGS

Original documents #138, 140, 145, and 146 forwarded to USCA on supplemental cert.

June 19 - Certified copy of docket and original Notice of Appeal #147, forwarded to USCA this date.

June 21 148 P's Notice of Cross-Appeal filed. CS. Fee paid. #148 forwarded to Appeals Clerk, Boston. Copy sent to counsel.

July 1 ORDER of First Circuit entered June 3, 1991: appeals dismissed for lack of jurisdiction.

149 MANDATE issued June 25, 1991.

1992

Feb. 6 150 P's Supplemental Application for Award of fees and costs for post-judgment, pre-appeal services filed; CS.

151 P's Memorandum in Support of #150 filed; CS.

152 ORDER OF COURT OF APPEALS entered January 8, 1992 . . . The Judgment of the district court is **AFFIRMED IN PART** and **REVERSED IN PART** and is **REMANDED** to the district court for further proceedings. **MANDATE** issued.

Feb. 20 153 Ds' Resp. in Opposition to # 150 filed; CS.

Mar. 5 154 ORDER OF COURT OF APPEALS entered . . . The mandate is amended by adding the following: the district court is instructed to compute prejudgment interest from August 27, 1990, the date of the district court's initial judgment. **MANDATE** is reissued.

Mar. 13 155 P's Motion for Leave to file Reply Brief filed; CS.

Mar. 18 **FREEDMAN, S.J.**: #155 **ALLOWED**: cc/cl.

156 P's Reply Brief to #153 filed; CS.

Mar. 19 157 ORDER of First Circuit Court of Appeals: Clerk is requested to add to mandate the amount of appellate attorney's fees in the amount of \$71,798.50 to Pl.

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Case No. 911591

WALTER F. BIGGINS,
PLAINTIFF, APPELLEE,

v.

THE HAZEN PAPER COMPANY, ET AL.,
DEFENDANTS, APPELLANTS.ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Dismissed: 91-1416, 91-1440, 91-1614

NO. BELOW: CA 88-00025

JUDGE BELOW: FREEDMAN, CH. J. (0114)

DATE OF JUDGMENT: AUGUST 27, 1990;

ORDERS: APRIL 5, 1991,
JUNE 13, 1991NOTICE OF APPEAL FILED: JUNE 17, 1991
[CIVIL RIGHTS]

ATTORNEYS FOR APPELLANT

John M. Harrington, Jr., Esq., Robert B. Gordon, Esq., Ropes & Gray,
One International Place, Boston, MA 02110; (617) 951-7000

ATTORNEYS FOR APPELLEE

John J. Egan, Esq., Egan, Flanagan & Cohen, P.C., 67 Market Street, P.O.
Box 9035, Springfield, MA 01102-9035; (413) 737-0260Maurice M. Cahillane, Esq., Egan, Flanagan & Cohen, P.C., 67 Market
Street, P.O. Box 9035, Springfield, MA 01102-9035; (413) 737-0260

1991

FILINGS-PROCEEDINGS

June 24 Notice of appeal and district court docket entries
received and filed. Case docketed and notices sent.
(See record filed in companion cases.)(db)

1991
 June 28 Appearance of John J. Egan, Esq. and Maurice M. Cahillane, Esq. for the plaintiff, appellee received and filed. (jm)
 June 28 Defendants-Appellants' Designation of Contents of Appendix and Statement of Issues, received and filed. (jm)
 June 28 Appearance of John W. Harrington, Esq., and Robert B. Gordon, Esq., for defendants/appellants, received and filed. (rm)
 June 28 Motion filed. Order: (Selya, J.) leave is granted the parties to proceed under F.R.A.P. 28(h) with defendants designated as appellants. Defendants' brief shall remain due July 29, 1991. Plaintiff may have 30 days to file his brief as appellee/cross-appellant; defendants may have 30 days thereafter to file their brief as cross-appellees and in reply as appellants. Cross-appellant's reply brief should be filed 10 days thereafter. Notices mailed. (rm)
 July 2 Brief and 6 volumes of appendix of appellant received and filed. Notices mailed. (bf)
 July 18 Order: (Cyr, J.) To show cause why these appeals should not be dismissed by August 1, 1991. Notices mailed. (eml)
 July 23 Parties' Joint Response To Order of Court Dated July 18, 1991, received and filed. (db)
 Aug. 1 Brief of plaintiff/appellee/cross-appellant Walter F. Biggins received and filed. (bf)
 Aug. 30 Reply brief for defendant/appellants and brief of cross/appellant, Hazen Paper Co., received and filed. (db)
 Sept. 9 Reply brief of the plaintiff/appellee/cross-appellant Walter F. Biggins received and filed. (bf)
 Sept. 11 Motion to strike portion of reply brief of the plaintiff/appellee/cross-appellant Walter F. Biggins, received and filed. (rm)

1991
 Sept. 16 Opposition to motion to strike portion of reply brief and alternative motion for leave to file reply brief, received and filed. (rm)
 Sept. 19 Assigned for hearing at the October, 1991 session. (cm)
 Sept. 20 ORDER: (Torruella, J.) In view of the parties' response to this court's show cause order, these appeals may proceed in normal course. No final jurisdictional ruling is made at this time, but rather the matter is reserved for consideration by the panel hearing the merits of the appeals. Notices mailed. (db)
 Oct. 1 Order: (Torruella, J.) Defendants' objections to plaintiff's reply brief are noted. The motion to strike is denied without prejudice to reconsideration by the panel deciding the merits of the appeal. Notices mailed. (rm)
 Oct. 11 Heard before Torruella, Bownes, Tauro, JJ. (cm)
 1992
 Jan. 8 Judgment: The judgment of the district court is affirmed in part and reversed in part and the cause is remanded to the district court for further proceedings consistent with the opinion issued this date. No costs to either party. Opinion of the Court by Bownes, J. Notices mailed. (rm)
 Jan. 21 Petition of defendants/appellants/cross-appellees for rehearing and suggestion for rehearing *in banc*, received and filed. (rm)
 Jan. 22 Plaintiff/appellee/cross-appellant's petition for rehearing and for rehearing *en banc*, received and filed. (rm)
 Jan. 29 Order: (Breyer, Ch. J. Bownes, Torruella, Selya, Cyr and Tauro, JJ.) Denying the petition for rehearing and suggestion for rehearing *en banc*. Notices mailed. (rm)

1992

FILINGS-PROCEEDINGS

- Feb. 6 Mandate issued, copy filed. Original papers returned to district court. Notices mailed. (rm)
- Feb. 10 Application of plaintiff (appellee/cross-appellant) for award of attorneys' fees and costs, received and filed. (rm)
- Feb. 10 Memorandum of plaintiff (Appellee/cross-appellant) in support of application for attorney's fees and costs, received and filed. (rm)
- Feb. 13 Opposition to plaintiff/appellee/cross-appellant's application for award of attorney's fees and costs, received and filed. (rm)
- Feb. 19 Plaintiff's motion to recall and amend mandate to clarify instructions respecting the allowance of interest, received and filed. (rm)
- Feb. 19 Memorandum in support of plaintiff's motion to recall mandate, received and filed. (rm)
- Feb. 24 Defendants-appellants' opposition to plaintiff's motion to recall and amend mandate, received and filed. (rm)
- Feb. 26 Order: (Bownes, J.) Plaintiff is entitled to appellate attorney's fees on the ADEA claim and the ERISA claim only. Plaintiff is also advised that this court will follow the district court and approve attorney's fees for partners in the amount of \$165 per hour and paralegals at the rate of \$50 per hour. The hourly fees for associates and junior associates should also be reduced accordingly. Finally, we advise plaintiff that no costs will be allowed. The plaintiff did not entirely prevail on appeal, and in this circuit, we usually do not allow costs in a case where there has been mixed results and the defendant has also prevailed on some important issues for reasons stated in said order. Notices mailed. (rm)
- Mar. 2 Plaintiff's reply to defendants' opposition to plaintiff's motion to recall and amend mandate, received and filed. (rm)

1992

FILINGS-PROCEEDINGS

- Mar. 5 Order: (Torruella, Bownes and Tauro, JJ.) The mandate in this case, which was issued on February 6, 1992, is constructively recalled. The mandate is amended by adding the following: "The district court is instructed to compute post-judgment interest from August 27, 1990, the date of the district court's initial judgment." Mandate is constructively reissued. Notices mailed. (rm)
- Mar. 10 Amended application of plaintiff (appellee/cross-appellant) for award of attorney's fees and costs, received and filed. (rm)
- Mar. 11 Defendant/appellants' response to plaintiff/appellee's amended application for attorney's fees and costs, received and filed. (rm)
- Mar. 19 Order: (Bownes, J.) We find that plaintiff's attorneys have satisfactorily complied with our order of February 26, 1992, in all respects except one. We do not think there has been an adequate reduction in the hours billed by attorneys Egan and Cahillane for writing the appellate brief. We award the plaintiff \$71,798.50 for appellate attorney's fees for reasons stated in said order. Notices mailed. (rm)
- Mar. 19 Order: (Torruella, Bownes and Tauro, JJ.) The clerk of the district court is requested to add to this court's mandate the amount of appellate attorney's fees in the amount of \$71,798.50 to the plaintiff. Notices mailed. (rm)
- April 9 Notification of filing Petition for Writ of Certiorari on April 3, 1992, October 1991 Term, Supreme Court No. 91-1600, received and filed in Case Nos. 91-1591 and 91-1614. (db)

1992

FILINGS-PROCEEDINGS

- May 18 Notification of filing petition for writ of certiorari on April 30, 1992, Supreme Court Case Number 91-1818, October 1991 Term, received and filed. (db)
- June 25 Supreme Court Order dated June 22, 1992, allowing petition for certiorari in Court of Appeals No. 91-1591 and 91-1614, received and filed. (db)

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Case No. 911614

WALTER F. BIGGINS,
PLAINTIFF, APPELLANT,

v.

THE HAZEN PAPER COMPANY, ET AL.,
DEFENDANTS, APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Comp. to 91-1591

No. BELOW: CA 88-00025

JUDGE BELOW: FREEDMAN, J. (0114)

DATE OF ORDER: APRIL 12, 1991; JUDGMENT: APRIL 1991;

ORDER: JUNE 13, 1991

NOTICE OF APPEAL FILED: JUNE 21, 1991

[CIVIL RIGHTS]

ATTORNEYS FOR APPELLANT

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John J. Egan, Esq., Egan, Flanagan & Cohen, P.C., 67 Market Street, P.O. Box 9035, Springfield, MA 01102; (413) 737-0260

ATTORNEYS FOR APPELLEE

John M. Harrington, Jr., Esq., Robert B. Gordon, Esq., Ropes & Gray, One International Place, Boston, MA 02110-2624; (617) 951-7000

1991

FILINGS-PROCEEDINGS

- June 28 Supplemental certificate consisting of notice of appeal and district court docket entries received and filed. Case docketed. Notices mailed. (lb) (See record previously filed in companion case.)

1991

FILINGS-PROCEEDINGS

- June 28 Motion filed. Order: (Selya, J.) Leave is granted the parties to proceed under F.R.A.P. 28 (h) with defendants designated as appellants. Defendants' brief shall remain due July 29, 1991. Plaintiff may have 30 days to file his brief as appellee/cross-appellant; defendants may have 30 days thereafter to file their brief as cross-appellees and in reply as appellants. Cross-appellant's reply brief should be filed 10 days thereafter. Notices mailed. (rm)
- July 2 Appearance of John M. Harrington, Jr., Esq. and Robert B. Gordon, Esq. for the appellees, received and filed. (eml)
- July 2 Brief and 6 volumes of appendix of appellant received and filed. Notices mailed. (bf)
- July 8 Appearance of Maurice M. Cahillane, Esquire, for appellant, received and filed. (pm)
- July 8 Appearance of John J. Egan, Esquire, for appellant, received and filed. (pm)
- July 8 Plaintiff/appellee/cross-appellant's designation of the record appendix and statement of issues, received and filed. (eml)
- July 18 Order: (Cyr, J.) To show cause why these appeals should not be dismissed by August 1, 1991. Notices mailed. (eml)
- July 23 Parties' Joint Response To Order of Court Dated July 18, 1991, received and filed. (db)
- Aug. 1 Brief of plaintiff/appellee/cross-appellant Walter F. Biggins received and filed. (bf)
- Aug. 30 Reply Brief of the defendants/appellants and brief of cross/appellees Hazen Paper Co., received and filed. (db)
- Sept. 9 Reply brief of the plaintiff/appellee/cross-appellant Walter F. Biggins received and filed. (bf)
- Sept. 11 Motion to strike portion of reply brief of the plaintiff/appellee/cross-appellant Walter F. Biggins, received and filed. (rm)

1991

FILINGS-PROCEEDINGS

- Sept. 16 Opposition to motion to strike portion of reply brief and alternative motion for leave to file reply brief, received and filed. (rm)
- Sept. 19 Assigned for hearing at the October, 1991 session. (cm)
- Sept. 20 ORDER: (Torruella, J.) In view of the parties' response to this court's show cause order, these appeals may proceed in normal course. No final jurisdictional ruling is made at this time, but rather the matter is reserved for consideration by the panel hearing the merits of the appeals. Notices mailed. (db)
- Oct. 1 Order: (Torruella, J.) Defendants' objections to plaintiff's reply brief are noted. The motion to strike is denied without prejudice to reconsideration by the panel deciding the merits of the appeal. Notices mailed. (rm)
- Oct. 11 Heard before Torruella, Bownes, Tauro, JJ. (cm)
- 1992
- Jan. 8 Judgment: the judgment of the district court is affirmed in part, reversed in part and the cause is remanded to the district court for further proceedings consistent with the opinion issued this date. No costs to either party. Opinion of the Court by Bownes. Notices mailed. (rm)
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- Jan. 22 Plaintiff/appellee/cross-appellant's petition for rehearing and for rehearing *en banc*, received and filed. (rm)
- Jan. 29 Order: (Breyer, Ch. J., Bownes, Torruella, Selya, Cyr and Tauro, J.J.) denying the petition for rehearing and the suggestion for rehearing *en banc*. Notices mailed. (rm)

1992

FILINGS-PROCEEDINGS

- Feb. 6 Mandate issued, copy filed. Original papers returned to district court. Notices mailed. (rm)
- Feb. 10 Application of plaintiff (Appellee/cross-appellant) for award of attorneys' fees and costs, received and filed. (rm)
- Feb. 10 Memorandum of plaintiff (Appellee/cross-appellant) in support of application for attorneys' fees and costs, received and filed. (rm)
- Feb. 13 Opposition to plaintiff/appellee/cross-appellant's application for award of attorney's fees and costs, received and filed. (rm)
- Feb. 19 Plaintiff's motion to recall and amend mandate to clarify instructions respecting the allowance of interest, received and filed. (rm)
- Feb. 19 Memorandum in support of plaintiff's motion to recall mandate, received and filed. (rm)
- Feb. 24 Defendants-appellants' opposition to plaintiff's motion to recall and amend mandate, received and filed. (rm)
- Feb. 26 Order (Bownes, J.) Plaintiff is entitled to appellate attorney fees on the ADEA claim and the ERISA claim only. Plaintiff is also advised that this court will follow the district court and approve attorney's fees for partners in the amount of \$165 per hour and paralegals at the rate of \$50 per hour. The hourly fees for associates and junior associates should also be reduced accordingly. Finally, we advise plaintiff that no costs will be allowed. The plaintiff did not entirely prevail on appeal, and in this circuit, we usually do not allow costs in a case where there has been mixed results and the defendant has also prevailed on some important issues for reasons stated in said order. Notices mailed. (rm)
- Mar. 2 Plaintiff's reply to defendants' opposition to plaintiff's motion to recall and amend mandate, received and filed. (rm)

1992

FILINGS-PROCEEDINGS

- Mar. 5 Order: (Torruella, Bownes and Tauro, JJ.) The mandate in this case, which was issued on February 6, 1992, is constructively recalled. The mandate is amended by adding the following: "The district court is instructed to compute post-judgment interest from August 27, 1990, the date of the district court's initial judgment. Mandate is constructively reissued. Notices mailed. (rm)
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- Mar. 11 Defendant/appellants' response to plaintiff/appellee's amended application for attorney's fees and costs, received and filed. (rm)
- Mar. 19 Order: (Bownes, J.) We find that plaintiff's attorneys have satisfactorily complied with our order of February 26, 1992, in all respects except one. We do not think there has been an adequate reduction in the hours billed by attorneys Egan and Cahillane for writing the appellate brief. We award the plaintiff \$71,798.50 for appellate attorney's fees for reasons stated in said order. Notices mailed. (rm)
- Mar. 19 Order: (Torruella, Bownes and Tauro, JJ.) The clerk of the district court is requested to add to this court's mandate the amount of appellate attorney's fees in the amount of \$71,798.50 to the plaintiff. Notices mailed. (rm)
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- June 25 Supreme Court Order dated June 22, 1992, allowing petition for writ of certiorari in Supreme Court No. 91-1600, Court of Appeals Nos. 91-1591 and 91-1614, received and filed. (db)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Caption Omitted]

AMENDED COMPLAINT

INTRODUCTION

1. This is an action filed pursuant to the Age Discrimination in Employment Act of 1967 as amended (29 U.S.C. 621) and the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1140) together with several pendant common law claims under Massachusetts state law.

PARTIES

2. The plaintiff, Walter F. Biggins is an individual and a citizen of the United States residing at 52 Redfern Drive, Longmeadow, Massachusetts.

3. The defendant, Hazen Paper Company is a corporation organized under the laws of Massachusetts with a principal place of business at Holyoke, Massachusetts.

4. The defendant, Thomas Hazen is an individual and a citizen of the United States residing at 17 College View Heights, South Hadley, Massachusetts.

5. The defendant, Robert Hazen is an individual and a citizen of the United States residing at 125 Woodbridge Terrace, South Hadley, Massachusetts.

JURISDICTION AND VENUE

6. Jurisdiction of this Court is proper under 28 U.S.C. Sec. 1337 and 29 U.S.C. Sec. 1132(c). Venue is proper within the Western District of Massachusetts as all the parties reside

within the District and all of the actions which are the subject of the suit occurred within the District.

FACTS

7. The plaintiff was born on May 29, 1925 and is presently 62 years of age.

8. On or about March 1, 1977, the plaintiff became employed by the defendant, Hazen Paper Company in the capacity of technical director.

9. At all times while the plaintiff was employed by the defendant company he performed all the duties required of him competently and well, to the benefit of the defendants.

10. During 1980 and 1981 the plaintiff, on his own initiative and using his own resources and skills, developed a new formula and process for the coating of certain foil paper manufactured by the defendant company. Plaintiff offered the use of this invention to the defendant company but the defendants decided not to make use of the process and formula until sometime in 1983. At all times the said process and formula had been known only to the plaintiff and the defendants. Use of the formula and process proved to be quite valuable and gave the defendant company a tremendous advantage over competitors. Eventually it created huge profits for the defendant company and continues to do so presently.

11. With the defendant company's successful use of the plaintiff's process and formula the plaintiff requested of company president, Thomas Hazen, additional compensation as consideration for the successful use of his process and formula. In response the defendant, Thomas Hazen, promised the plaintiff that he would receive corporate stock of a sufficient value to raise his salary (then \$43,000.00 per year) to a minimum of \$100,000.00. The plaintiff agreed to this offer and in reliance on the defendant's promise continued to allow the defendant company to make use of his formula and process, maintained its secrecy and continued his employment with the defendant corporation.

12. Although the defendants continued to promise the plaintiff that they would implement the above said agreement there was continuing delay and avoidance of the plaintiff's inquiries.

13. On May 30, 1986, the defendants presented the plaintiff with an "Employee Confidentiality Patent and Trade Secret Agreement" with a demand that he sign said agreement by June 9, 1986. At the same time they complained to the plaintiff that certain off duty business activities which he had been engaged in for some time were "unacceptable". The proposed agreement did not incorporate any of the previously agreed upon benefits for the plaintiff but required inter alia that the plaintiff assign to the defendants any right to trade secrets which he had or would develop and that he promise not to make future use of them for his benefit. It also required his signing a non-competition agreement.

14. Plaintiff sought counsel with respect to the defendants proposed agreement but defendants insisted he sign it without further discussion. On June 13, 1986 when the plaintiff refused to sign the agreement at the insistence of Thomas Hazen, he was fired and ordered to leave the building.

15. At the time of his dismissal, the plaintiff was 61 years old. Defendants at that time had a retirement plan which the plaintiff had participated in for over nine years. He required only 56 additional work hours to become fully vested in said plan.

16. Shortly after his termination, the defendants filled the plaintiff's position with a considerably younger individual.

17. Immediately after the plaintiff's termination, the defendants (by letter to plaintiff's counsel at that time) took the position that the defendants had a proprietary interest in information processes, etc. which the plaintiff had developed while employed at Hazen Paper Company.

COUNT I

(AGE DISCRIMINATION)

18. The conduct of the defendants in terminating the plaintiff's employment, replacing him with a younger individual,

and acting to deprive him of his pension benefits constitutes illegal age discrimination in violation of 29 USC, Section 623.

19. The above said actions of the defendants were willful violations of 29 USC, Section 623.

20. On March 24, 1987 the plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission in accordance with 29 USC, Section 626.

21. As a direct and proximate result of the actions of the defendants in terminating the plaintiff's employment, the plaintiff has and will continue to lose the benefits of his employment with the defendants included but not limited to back wages, future wages, bonuses, insurance benefits, and pension benefits.

WHEREFORE, the plaintiff prays:

1. That he be awarded compensatory damages in the amount of \$1,000,000.
2. That he be awarded an equal amount of liquidated damages.
3. That he be awarded reasonable attorney's fees, plus costs.
4. That the Court grant such other and further relief as it deems just.

COUNT II

(ERISA)

22. The plaintiff hereby repeats and realleges each and every claim made in paragraphs 1 through 21.

23. During the period of the plaintiff's employment, the defendants maintained the above-described retirement plan for the benefit of its employees, including the plaintiff. Said plan was, and continues to be, an "employee benefit plan" as that term is defined in 29 USC, Section 1002.

24. Had the plaintiff been allowed to continue his employment, he would have been fully vested in said plan after 56 more work hours.

25. Had plaintiff been allowed to continue his employment until his expected retirement date, he would have been entitled to take a normal retirement under said plan and would have been entitled to substantial benefits under said plan.

26. The actions of the defendants in terminating the plaintiff were in whole or part for the purpose of interfering with the plaintiff's attainment of the rights to which he would have become entitled to under the aforementioned retirement plan had he become fully vested in said plan.

27. The conduct of the defendant was in violation of an[d] contrary to the provisions of 29 USC, Section 1140.

28. As a direct and proximate result of the conduct of the defendants, the plaintiff has been deprived of his employment and all the rights and benefits to be derived therefrom and has been prevented from obtaining a fully vested right and a normal retirement benefit under said plan.

29. Recourse by the plaintiff to defendant's employee benefit claims procedure would be futile since plaintiff was discharged for the purpose in whole or part of preventing him from becoming fully vested in said plan and/or from obtaining a normal retirement benefit from said plan.

30. Copies of this complaint have been mailed to Anne McLaughlin, Secretary of Labor and James Baker, Secretary of the Treasury.

WHEREFORE, the plaintiff prays:

1. That the Court award plaintiff damages for earnings and benefits lost by him from 1977 to the date of judgment.
2. That the Court order the defendants to reinstate the plaintiff to his rightful position and retroactively restore to the plaintiff all of the benefits of his employment including the aforementioned employee benefit plan.
3. That the Court award the plaintiff costs and reasonable attorney fees.
4. That the Court award such further relief as it deems just.

COUNT III

(DECLARATORY JUDGMENT)

31. The plaintiff hereby repeats and realleges each and every claim stated in paragraphs 1-30.

32. The plaintiff is the rightful inventor, developer and owner of the trade secret formula and process described in paragraph 10. The defendant's use of this process and formula derives from its fraudulent inducement of the plaintiff to allow such use based on promises of additional stock compensation which the defendants never intended to comply with.

33. The defendants through their agents have asserted proprietary rights to the plaintiff's process and formula. Plaintiff is the rightful and sole owner of said trade secrets and wishes to make use of them for his own benefit. An actual controversy has therefore arisen between the parties as to the ownership of said trade secrets and the rights to them.

WHEREFORE, the plaintiff prays:

1. That the Court enter a judgment determining the rights of the parties to the trade secret formula and processes and declaring that the plaintiff is the rightful owner.

2. The Court enter an order deterring the rights of the parties to the stock promised the plaintiff and ordering the defendant to turnover said stock to the plaintiff.

3. That the Court enter a permanent injunction and restraining them from interfering with the plaintiff's use thereof.

COUNT IV

(WRONGFUL DISCHARGE)

34. The plaintiff hereby repeats and realleges each and every claim stated in paragraphs 1-33.

35. The actions of the defendants in discharging the plaintiff due to his age and/or to deprive him of his earned pension rights and/or for his refusal to relinquish his right to inventions and

trade secrets developed by himself and his right to use and market those inventions and/or for discharging the plaintiff in order to prevent his obtaining corporation stock earned by him under the promises made by the defendants were wrongful and in bad faith and a violation of the implied covenant of good faith and fair dealing between the parties and were against public policy.

36. By reason of his wrongful discharge made in bad faith by the defendant, the plaintiff has suffered loss of salary plus all other benefits of employment including loss of pension rights and ownership of corporate stock.

WHEREFORE, the plaintiff prays:

1. That the Court award him compensatory damages in the amount of \$5,000,000.

2. That the Court award him reasonable attorneys fees and costs.

3. That the Court grant such further relief as it deems just.

COUNT V

(ESTOPPEL/FRAUD)

37. The plaintiff hereby repeats and realleges each and every claim stated in paragraphs 1-36.

38. The defendants fraudulently promised the plaintiff that in exchange for his trade secret development they would pay him in addition to his regular salary corporate stock of a value which would increase his annual compensation to \$100,000.00. The plaintiff in reliance upon this promise continued to allow the defendants to utilize exclusively the trade secrets he had developed, forewent personal marketing and use of the trade secret and continued his employment with the defendants with the understanding that he would receive the stock. Such reliance caused the plaintiff detriment and was fraudulently induced by the defendants.

WHEREFORE, the plaintiff prays:

1. That he be awarded compensatory damages in the amount of \$5,000,000.
2. That he be awarded his attorneys fees and costs.
3. That the Court grant such other and further relief as it deems just.

COUNT VI

(CONVERSION)

39. The plaintiff hereby repeats and realleges each and every claim stated in paragraphs 1-38.

40. The actions of the defendants in fraudulently inducing plaintiff to allow exclusive use of his property and in appropriating the plaintiff's trade secret developments without compensating him as promised constitute wrongful conversion of the plaintiff's property.

WHEREFORE, the plaintiff prays:

1. That he be awarded compensatory damages in the amount of \$5,000,000.
2. That the Court award the plaintiff his attorneys fees and costs.
3. That the Court grant such other and further relief as it deems just.

COUNT VII

(MASS. CIVIL RIGHTS c. 12)

41. The plaintiff hereby repeats and realleges each and every claim stated in paragraphs 1-40.

42. The actions of the defendants in discharging the plaintiff on account of his age, pension rights, in wrongfully discharging him in violation of the covenant of good faith and fair dealing and in violation of public policy, in wrongfully converting the plaintiff's property and in fraudulently inducing the plaintiff

to allow continued use of his property constitute a violation of M.G.L. c. 12, Section 11H and Section 11I.

WHEREFORE, the plaintiff prays:

1. That he be awarded compensatory damages in the amount of \$5,000,000.
2. That he be awarded his attorneys fees and costs.
3. That the Court grant such other and further relief as it deems just.

COUNT VIII

(BREACH OF CONTRACT)

1. During the plaintiff's employment with the defendants, the company maintained certain personnel policies which were part of the terms and conditions of the plaintiff's employment and were either implied or express terms of an employment contract between the plaintiff and the defendants.

2. Said policies prohibited discrimination on the basis of age regarding terms of employment including termination and further prohibited termination unless there were outlandish gross violations of standards or failure to respond to repeated counselling.

3. By their actions as described above, the defendants violated these provisions of the contract.

WHEREFORE, the plaintiff prays:

1. That he be awarded compensatory damages in the amount of Five Million (\$5,000,000.00) Dollars.
2. That the Court award him reasonable attorney's fees and costs.
3. That the Court grant such further relief as it deems just.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Dated: July 26, 1988 s/ MAURICE CAHILLANE
 MAURICE M. CAHILLANE, ESQ.
 JOHN J. EGAN, ESQ.
 EGAN, FLANAGAN AND EGAN, P.C.
 69 Market Street
 Post Office Box 9035
 Springfield, MA 01102
 (413) 737-0260

[Certificate of Service Omitted]

 UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS

[Caption Omitted]

 AMENDED ANSWER OF DEFENDANTS
 HAZEN PAPER COMPANY, ROBERT HAZEN,
 AND THOMAS HAZEN

Defendants, by their attorneys, hereby respond to the separately numbered paragraphs of the Amended Complaint in this action as follows:

FIRST DEFENSE

Answers to each paragraph of the Amended Complaint by Defendants are made without waiving, but expressly reserving, all rights that they might have to seek relief by appropriate motions directed to the allegations in the Amended Complaint.

"INTRODUCTION"

1. Defendants need not respond to the legal averments set forth in paragraph 1 of the Amended Complaint.

"PARTIES"

2. Defendants admit the factual allegations set forth in paragraph 2 of the Amended Complaint.
3. Defendants admit the factual allegations set forth in Paragraph 3 of the Amended Complaint.
4. Defendants admit the factual allegations set forth in Paragraph 4 of the Amended Complaint.
5. Defendants admit the factual allegations set forth in Paragraph 5 of the Amended Complaint.

"JURISDICTION AND VENUE"

6. Defendants need not respond to all of the allegations in Paragraph 6 of the Amended Complaint in so far as that paragraph sets forth legal averments. To the extent that Paragraph 6 may be deemed to make factual allegations, Defendants deny them, except admit that all parties reside within the Western District of Massachusetts.

"FACTS"

7. Defendants admit the factual allegations set forth in paragraph 7 of the Amended Complaint.
8. Defendants admit the factual allegations set forth in Paragraph 8 of the Amended Complaint, except that Plaintiff started work for Defendants on March 8, 1977.
9. Defendants deny the allegations set forth in Paragraph 9 of the Amended Complaint.
10. Defendants deny the allegations set forth in Paragraph 10 of the Amended Complaint.
11. Defendants deny the allegations set forth in Paragraph 11 of the Amended Complaint.
12. Defendants deny the allegations set forth in Paragraph 12 of the Amended Complaint.
13. Defendants deny the allegations set forth in Paragraph 13 of the Amended Complaint. Further answering, Defendants state that the proposed "Employee Confidentiality Patent and Trade Secret Agreement" and the proposed "non-competition agreement" speak for themselves.
14. Defendants deny the allegations set forth in Paragraph 14 of the Amended Complaint.

15. Defendants admit the factual allegations set forth in Paragraph 15 of the Amended Complaint, except deny that Plaintiff required 56 additional work hours to become vested in the retirement plan.
16. Defendants admit that, after Plaintiff's termination, a younger individual applied for his position and was hired.
17. Defendants deny the allegations set forth in Paragraph 17 of the Amended Complaint. Further answering, Defendants state that it was always their position that all discoveries, inventions and improvements, applicable in any way to Defendant's business, were Defendant's sole and exclusive property.

"COUNT I"

18. Defendants deny the allegations set forth in Paragraph 18 of the Amended Complaint.
19. Defendants deny the allegations set forth in Paragraph 19 of the Amended Complaint.
20. Defendants need not respond to the legal averments set forth in Paragraph 20 of the Amended Complaint. Further answering, Defendants state that they received notice of charges of discrimination purportedly filed by Plaintiff with the Massachusetts Commission Against Discrimination and with the Equal Employment Opportunity Commission.
21. Defendants deny the allegations set forth in Paragraph 21 of the Amended Complaint.

"COUNT II"

22. Defendants repeat their answers as set forth above in Paragraphs 1-21 and incorporate them herein by reference.
23. Defendants need not respond to the legal averments set forth in Paragraph 23 of the Amended Complaint.

Further answering, Defendants admit that a retirement plan is maintained for the benefit of its employees. Said retirement plan document speaks for himself.

24. Defendants deny the allegations set forth in Paragraph 24 of the Amended Complaint.
25. Defendants deny the allegations set forth in Paragraph 25 of the Amended Complaint.
26. Defendants deny the allegations set forth in Paragraph 26 of the Amended Complaint.
27. Defendants deny the allegations set forth in Paragraph 27 of the Amended Complaint.
28. Defendants deny the allegations set forth in Paragraph 28 of the Amended Complaint.
29. Defendants deny the allegations set forth in Paragraph 29 of the Amended Complaint.
30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 30.

"COUNT III"

31. Defendants repeat their answers as set forth above in Paragraphs 1-30 and incorporate them herein by reference.
32. Defendants deny the allegations set forth in Paragraph 32 of the Amended Complaint.
33. Defendants deny the allegations set forth in Paragraph 33 of the Amended Complaint.

"COUNT IV"

34. Defendants repeat their answers as set forth in Paragraphs 1-33 and incorporate them herein by reference.
35. Defendants deny the allegations set forth in Paragraph 35 of the Amended Complaint.

36. Defendants deny the allegations set forth in Paragraph 36 of the Amended Complaint.

"COUNT V"

37. Defendants repeat their answers as set forth in Paragraphs 1-36 and incorporate them herein by reference.
38. Defendants deny the allegations set forth in Paragraph 38 of the Amended Complaint.

"COUNT VI"

39. Defendants repeat their answers as set forth in Paragraphs 1-38 and incorporate them herein by reference.
40. Defendants deny the allegations set forth in Paragraph 40 of the Amended Complaint.

"COUNT VII"

41. Defendants repeat their answers as set forth in Paragraphs 1-40 and incorporate them herein by reference.
42. Defendants deny the allegations set forth in Paragraph 42 of the Amended Complaint.

"COUNT VIII"

43. Defendants deny the allegations set forth in Paragraph 1 of the Amended Complaint.
44. Defendants deny the allegations set forth in Paragraph 2 of the Amended Complaint.

SECOND DEFENSE

Counts II - VII fail to state claims against Defendants for which relief may be granted. Defendants reserve the right pur-

suant to Fed. R. Civ. P. 12(b)(6), 12(c), 12(d), and 12(h)(2) to make application to the Court prior to trial to move to dismiss all or any part of this action.

THIRD DEFENSE

Plaintiff's claims are barred by the equitable doctrines of estoppel, waiver, and unclean hands.

FOURTH DEFENSE

Count II of the Amended Complaint is barred because Plaintiff has failed to exhaust plan remedies as required by the Employee Retirement Income Security Act ("ERISA").

FIFTH DEFENSE

Count II of the Amended Complaint is barred by Plaintiff's failure to follow and exhaust administrative procedures as required by ERISA.

SIXTH DEFENSE

The alleged covenant, promises and inducements sued upon in Counts IV, V and VI are void for lack of consideration.

SEVENTH DEFENSE

The alleged covenant, promises and inducements sued upon in Counts IV, V and VI cannot support this action because Plaintiff breached the conditions that he not engage in unethical conduct or dishonesty.

EIGHTH DEFENSE

Count IV is preempted by ERISA.

NINTH DEFENSE

Count IV is precluded by the availability of comprehensive remedies under the Age Discrimination in Employment Act and Mass. Gen. Laws ch. 151B.

TENTH DEFENSE

The alleged promises and inducements, sued upon in Count V and Count VI, by their terms were not to be performed within one year from the making thereof and neither said promises or inducements nor any note or memorandum thereof was ever made in writing and signed by the party to be charged therewith or by some person thereunto by him lawfully authorized, as required by the laws of Massachusetts.

ELEVENTH DEFENSE

Termination of Plaintiff's employment was fully justified by Plaintiff's unethical conduct and dishonesty.

TWELFTH DEFENSE

Defendants fully performed all of their obligations to Plaintiff.

THIRTEENTH DEFENSE

The alleged contract sued upon in Count VIII is void for lack of consideration.

FOURTEENTH DEFENSE

The alleged contract sued upon in Count VIII, if it exists, cannot support this action because Plaintiff breached the condition that he not jeopardize customer relations, and that he respond to repeated counselling.

Respectfully submitted,

HAZEN PAPER COMPANY,
THOMAS HAZEN AND ROBERT HAZEN

s/ PATRICK W. MCGINLEY

SULLIVAN & HAYES
PATRICK W. MCGINLEY •
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Dated in Springfield, Massachusetts
on this third day of August, 1988

[Certificate of Service Omitted]

EXCERPTED TRIAL TRANSCRIPTS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Caption Omitted]

• • •

[July 16, 1990, Volume I, p 34] A. Discharged November 5th, 1945.

Q. And were you honorably discharged? A. Yes, I was.

Q. Did you receive any decorations? A. I received a Combat Infantry Badge, and an Italian Campaign Medal, with four clusters. Good Conduct Medal.

Q. Anything else? A. Also received a Bronze Star.

Q. What was that for, Mr. Biggins? A. It was for valor, I guess they call it.

Q. Anyone refer to you as a Benedict Arnold then? A. No, they didn't.

Q. Now, after you were discharged from the Army, Mr. Biggins, did you take advantage of the GI Bill to pursue your education? A. Yes, I did.

Q. And what did you do? A. I entered Holy Cross College the day after I was discharged.

Q. And what did you do at Holy Cross? A. I took courses related to the Bachelor Degree in — Bachelor of Science in chemistry.

[35] Q. When you had completed your Bachelor's Degree, what did you do? A. I was awarded a Fellowship to get my Master's Degree by Holy Cross.

Q. And what was the criteria for that Fellowship? A. Marks, attitude.

Q. And did you receive such a Fellowship? A. Yes, I did.

Q. Did you receive a graduate degree? A. I received a graduate degree in 1950.

Q. That was in? A. Chemistry.

Q. And at the time, Mr. Biggins, what did you do? A. I sought employment.

Q. And where was the first place that you were employed? A. My first employment was with Brown Company in Berlin, New Hampshire.

Q. What was your job there? A. I was a research chemist in their Research Department.

Q. What does Brown Company do, or did it do at the time? [36] A. Brown Company is one of the oldest paper companies in America.

And they made specialty paper, regular paper. They were the first ones to invent paper towels. They sold a lot of wood pulp for photographic film.

Q. What did your job duties involve there? A. I was hired to work on cellulose and nitrate derivatives in a contract for the Government for smokeless gunpowder.

Q. And how long were you at Brown? A. I was at Brown Company about five years.

Q. And then what did you do? A. I left Brown Company and went with Universal Match Corporation outside Boston.

Q. And Universal Match Corporation, what did they do?

A. Universal Match Company operated a base for a Government agency, and in the town of Maynard.

Q. Is that where you worked? A. Yes, I did.

Q. What were your job responsibilities there? A. I was a research chemist. I worked on explosives. And when the base was closed, I was [37] cautioned I could never discuss the work that we performed.

Q. Now, after that, what did you do? A. I went to work with Ludlow Corporation in Needham, Massachusetts.

Q. What was your job there? A. I was a research and development chemist with them.

Q. Excuse me. What time are we in right now? A. I went and joined Ludlow in 1957.

Q. Now, what was the business that Ludlow Corporation was in? A. Ludlow is in several businesses, but I was hired to work in their fine paper division as a research chemist.

Q. Did you do anything else in Ludlow? A. Well, I fulfilled several functions. The company was growing. It had been merged. It had been formed by a merger of several smaller companies, and they had plants located across the country.

And I set up the quality control program, a unified program between all plants. I did product application work after that program was [38] set up, when we had to determine what the customer needed and talk with the customer, and come back and write project proposals.

And I ended up in technical service, acting as liaison between the laboratory, the manufacturer, and customers.

And finally, I served probably three years as a field sales representative in New England.

Q. And how long were you with Ludlow? A. I joined them in '57. I left in 1966.

Q. Where did you go to work then? A. I went to work for Dexter Corporation in Windsor Locks, Connecticut.

Q. And what was your job title at Dexter? A. At Dexter, the official title was Project Manager.

Q. And what business was Dexter in? A. Dexter was a paper manufacturer that specialized in long fibered papers. They invented bag paper.

Q. Now, Mr. Biggins, in 1977, did you become employed by the Hazen Paper Company in Holyoke? A. I did.

[39] Q. And what was the job that you were hired for? A. Hired as a Technical Director.

Q. And at that time, did Hazen Paper Company have a Technical Director? A. No, they did not. They never had the function before that.

Q. And what did that job involve? A. It involved the aspects of technical requirements for manufacturing paper. And setting them up, implementing and maintaining contact with the Executive Committee to be sure that they are all tied in together.

Q. I'm going to show you — if I may approach the witness — a copy of a document, Mr. Biggins, and ask you if you could identify that. A. Yes.

Q. What is that document? A. That is the job description that I received, oh, some days after I joined the company in 1977.

Q. This was the description of your job duties at the Hazen Paper Company? A. Yes, it was.

MR. CAHILLANE: I would like to [40] offer this as Exhibit 3.

MR. MCGINLEY: No objection.

(Plaintiff's Exhibit 3 marked in evidence.)

Q. (By Mr. Cahillane) Now, at the time when you were hired, Mr. Biggins, who owned the Hazen Paper Company?

A. It was a privately held company. Owned by two cousins, Robert and Thomas Hazen.

Q. And what was the business that the Hazen Paper Company was in? A. Hazen Paper was a converter. They bought paper and did something to it. They were primarily gravure printers, and they applied coatings and designs to paper using the gravure process.

Q. And could you tell the jury, Mr. Biggins, what types of products the Hazen Paper Company produced? A. They made a lot of printed paper that was used in cosmetic wrap.

When you walk through Steiger's or G. Fox at Christmastime, you find the cosmetic, various cosmetic people have very fancy designed boxes for the cosmetics. And Hazen was the supplier . . .

. . . .

[49] . . . nip. They nip the two things, so you will hear that as we talk.

The foil, or paper, is fed into the nip, comes in contact with the filled cells. It's a lot of pressure in here, and the ink is transferred to the surface by capillary action.

Capillary action is what the bath towel does in the morning. It takes the water and gets it between the surface and makes it spread.

And the pressure here in the nip causes the ink to spread and coat the surface of the foil. This rubber backup roller causes the pressure, and you notice that the majority of the ink is transferred to the web.

These cells do contain a little bit of residual in the corners, and they redisperse down here.

I want you to now notice that this level in this is an ink, there is a solvent type system. It's level, relatively level, and this is the very narrow plumb that comes up to this doctor blade. And the doctor blade is set up the same. That is the gravure station.

Q. Now, this station appears on a printing machine? [50]

A. On a printing machine or a laminator or both.

Q. Do you have with you a picture of such a machine?

A. Yes, I do.

Q. Could I ask you first, this picture that you have in your hand right now, how did you obtain this? A. This is copied from a magazine.

Q. What type of magazine? A. Trade magazine, discussing pressures and that sort of thing.

Q. A picture of what? A. Of a five-station printer. Similar to the ones that are used in the business.

It might be used for printing the gravure section of the newspaper.

Q. Were such machines used at Hazen Paper Company?

A. Yes, this is the same idea of the machines that they did use.

MR. CAHILLANE: Your Honor, I would like to offer this picture and ask permission to show it to the jury.

MR. MCGINLEY: No objection.

[51] (Plaintiff's Exhibit 5 marked in evidence.)

Q. (By Mr. Cahillane) Now, Mr. Biggins, you also made reference to lamination on foil as a product that Hazen Paper Company produces. A. Yes. It is a bigger product than — in volume than the printed paper.

Q. And do you have a diagram to explain that process as well? A. Yes, I do.

MR. CAHILLANE: Once again, your Honor, I would like to offer this. We have copies of the diagram.

(Plaintiff's Exhibit 6 *marked in evidence.*)

Q. (By Mr. Cahillane) Have you got it set up now? A. Yes.

Q. This is a copy of what? A. This is a typical paper and foil or film laminator. It approximates the one — it's one similar to the present one at Hazen's.

Q. Using this diagram, explain the process from the beginning to the end that Hazen or such a company would go through. [52] A. Yes. Once you have — this machine is approximately 150 feet long. The height to here is probably 25 to 30 feet. These stations are probably chest high. The paper is put on the shaft this way, roll unwound, fed into the machine.

Let's talk about foil. The foil is mounted on this on a stand in this direction. It's the same foil you get at a home to wrap sandwiches, but it is a bigger form.

The foil is unwound and passed through an adhesive station. It is not a gravure station. This is a smooth rubber roll. It transfers the adhesive to the foil.

Then the foil transfer is fed into a nip. Once again, a nip, and the adhesive on the bottom and the paper is fed so that it comes in contact with the foil at that particular point, and the two are squeezed together or nipped.

The paper then travels for a distance to allow the adhesive to flow, and removes some of the stress. And it is passed up through the gravure station, the same gravure station as used on a printing press. And lacquer is applied to the surface of the foil.

Now, it's absolutely necessary to apply [53] lacquer because the foil is very, very active metal. And standing in contact with the air, it oxidizes. And if it oxidizes, it can't be printed subsequently. So a protective coating has to be applied to the coating whenever foil is laminated on one of these machines.

The paper then passes through the oven, 300 degrees sometimes, and is rewound and goes through another nip here,

but this is just to pull the paper through the machine. And it is rewound here as the laminated product.

It's a typical lamination. Sometimes these stations can be underneath the drive.

Q. Mr. Biggins, the machines that show the process of that diagram, you also have a picture of that? A. Yes, I do.

Q. Just in case I cut you off, is there anything else about that process that you wanted to explain to the jury? A. I don't think so right now.

Q. Okay. Now, this picture you have is a picture of what?

A. This is a picture of, once again, taken [54] from a magazine. The unwind station is under the machine. The foil station is under the machine.

The two unwind's adhesive is applied to the foil, the majority is made up in this area, the paper comes down and the lacquer is applied in this station, and the paper goes through the oven and is rewound down here. Same setup.

MR. CAHILLANE: If I might, I would also like to offer this picture and show it to the jury, if I may.

THE COURT: All right.

MR. CAHILLANE: I think we are through with the overhead for the time being.

Q. (By Mr. Cahillane) Now, Mr. Biggins, in your job as Technical Director, did part of your job at Hazen Paper Company involve product development? A. Yes.

Q. In what way? A. Well, rather specifically stated that product development would deal with getting materials from vendors, and vendors at Hazen Paper Company were people who supplied ink, supplied paper, supplied foil.

Q. Vendors, you're talking about people [55] outside the company? A. Yes.

Q. Who sold to the company? A. Yes.

Q. And what was your understanding of what your role was to be in this type of product development as Technical Director? A. To work with the vendors; to obtain different materials; to develop new products.

Q. Were you ever asked to invent or develop any of these products yourself? A. No, I was not.

Q. Now, at some point in time, did you become involve[d] yourself in developing coatings or inks at Hazen Paper Company? A. Yes, I did.

Q. And when you talk of coatings, this includes the materials that you had on those diagrams at the bottom of the roll is what goes on the paper? A. Yes.

Q. Now, at some point in time, did you become involved in developing a particular kind of coating? A. Yes, I did.

[56] Q. And was that a coating — well, let me ask you this.

When you came to the Hazen Paper Company, the coatings that were in use at the time were made of what?

A. Nitrocellulose predominantly, and some vinyl, but that was exclusively the two systems that we used.

Q. And within the industry, were these the type of coatings that were generally used? A. That was pretty much related to the whole industry, yes.

Q. At some point, did you become involved in developing a water-based coating? A. Yes, I did.

Q. And what would be the difference between that type of coating and the nitrocellulose and vinyl you just mentioned?

A. Because it's water, it doesn't dissolve, and because it's water, it behaves differently on the machine.

Q. Did the use or the existence of a water-based coating have any other significance to the industry at the time you came to Hazen Paper Company, or shortly thereafter? [57] A. Yes. Because the Clean Air Act, the industry was being required by the Federal Government to cease pumping the evaporated solvent into the atmosphere, causing environmental problems.

Q. And what did the evaporated solvents going into the air, where were they coming from? A. Coming from several sources, but were coming from the ovens in the top of those laminators, coming from the ovens, and the top of the various gravure sections in the printing presses.

Q. Now, when was this that we are talking about? A. Late '70's it started to happen.

Q. At that point in time, was this a problem that Hazen Paper Company had to deal with? A. It was, yes. It was evidently going to have great impact on the company.

Q. And what were the alternatives that Hazen had in terms of making environmental compliance with those, the laws and regulations? A. Two choices. They could either eliminate the use of solvents, or they could destroy the solvents before they evaporated them to the atmosphere.

[58] Q. And what would the latter involve? A. The latter involves very expensive incineration. You have a gas flame, very high temperature. And you pass those vapors over the gas flame and burn them, but they are very dilute, actually, so it takes a lot of gas to do it.

Q. And in the late 1970's, did you begin to deal with this problem for Hazen Paper Company? A. Yes, I recognized that it was going to be important.

Q. And what did you do? A. I started contacting vendors to see if they would have some water-based systems that could be offered to start eliminating or reducing the amount of emissions.

Q. Did vendors offer water-based coatings to you? A. Yes. All of them are working on — it was a brand-new area. We had been caught unaware. The coating suppliers were starting really from scratch, and they had initial candidates for evaluation, and I evaluated several.

Q. What became of that evaluation? A. We determined that a couple of [59] candidates held the most promise.

Q. And was something done about that; were they evaluated? A. We contacted these people and asked for samples. They supplied us samples free of charge, and they usually came in five-gallon pails, and we made evaluations of those samples on the equipment.

Q. And were the products that were offered successful?

A. One held a little bit of promise initially, but it deteriorated and it was not going to be suitable.

Q. Now, at that point in time, what did you do? A. I decided that because they were in the infancy of a growing field, because I had a considerable background developing coatings from my past experience, that I myself would simultaneously start investigating.

I could get the same raw materials from chemical suppliers and the various additives and do my own development, and I proceeded to do this.

Q. Were you asked by — let me ask you this. Who were your superiors at Hazen Paper [60] Company? A. I reported to Thomas Hazen exclusively.

Q. Did you also deal with Robert Hazen on many occasions?

A. Oh, yeah. I talked to him but I took — my line responsibility was to Tom Hazen to avoid confusion.

Q. Now, had Thomas Hazen asked you to go about this process of making a coating yourself? A. No, he hadn't.

Q. Was he aware that you were doing it? A. Initially, no.

Q. At some point in time, he became aware? A. Yes.

Q. Now, did you then commence to try and develop your own water-based coating? A. Yes, I did.

Q. How did you go about that? A. Whenever you do it, start a project, you have to start out with a literature search. Find out what's available, how things behave. And I undertook a literature search with the people who would have been candidates for use in this line of a development.

Q. And then what did you do? [61] A. Once I picked the samples in a general type of product that I needed, I sent away and got small laboratory samples. They came in jars. And made some work, did some work on my own.

Q. And did you — were you able to develop a coating that you thought was workable? A. Yes, I did.

Q. Now, I believe we have another diagram that might be useful to the jury to explain the use of coatings and their properties. A. Yes.

MR. CAHILLANE: I would like the Court's permission if Mr. Biggins could step up to the overhead once again.

THE COURT: All right.

Q. (By Mr. Cahillane) Now, if you could, Mr. Biggins, explain what this diagram is. A. This is a diagram of a piece of paper that's been laminated and coated.

And if we had that piece of paper laying this way, cut it sharply in half, then put a magnifying device on it, this is what we would be looking at.

This is a blown-up scheme of it.

Q. Okay. [62] And in terms of the coating itself, do you have a description there of the type of properties that you were looking for? A. Yes, I did.

Q. Explain that. A. I would love to explain it, I love talking about this product, because of all the products I have developed in my whole career, this is the best.

MR. MCGINLEY: May I have that stricken, that gratuitous remark?

THE COURT: All right. Jury will disregard the comment.

THE WITNESS: I'm sorry, your Honor.

This is a substrate. In this case, call it paper. It serves to carry the film or foil — and let's limit ourselves at the present time to foil.

So this is the foil that has been adhered to the paper in a laminator.

Now, the gravure station or the laminator, a lacquer is put on top of the foil, like I mentioned, to protect the surface.

With solvent-based coatings, it wets the [63] surface very nicely and quickly. Solvents flash off and you have a residual amount of resin, with color, additives in it to achieve the various properties.

With the water-based coating, you have a different set of circumstances because the water-base[d] coating does not evaporate quickly. Water takes a longer period of time to come off. So you have to handle it in a completely different fashion.

I will show you it in a diagram in a minute one aspect of that.

When you develop a coating with the water-base system, it becomes very complex because you first have to be careful of the bond between this coating and the film or the foil. This surface, this is a smoother surface. Nothing for the coating to bite into. So you have to rely on electrical charges, actually, and the coating to bond to the aluminum.

Now, aluminum is not magnetic, so it's not magnetic for your different kind of force that goes — I won't bore you, but you do have to use the proper electrical charges in the coating to effect this adhesion. All right.

[64] Once you get that adhesion, you probably add an additive to it. You have to then be concerned with the thickness of the film. It has to have certain properties.

One of the first things that we are able to lock onto is an additive that would take this coating, if there was a dye in it to bring the color out, to eliminate bubbles and to wet all solid particles. Bubbles would shine up or show. You will have shiny spheres, and solid, the particles would like — make the coating look cloudy.

So we had to get an additive that did this, and we found one very successfully. This film has to have properties of elasticity, and flexibility. If the product is folded or bent around something, this film has to stretch. Has to be elastic and it won't break.

And when the foil is straightened out, it has to go back together, so you have to have the property of yielding, the right amount, but never rupturing.

Further than that, you have a big problem at this surface. This is what you are selling. This is the product that when a customer [65] buys it, he's interested in this. Because his ultimate customer is a printer who makes the label seen by the customer. The ultimate customer. The consumer. So his job has to be very amenable to this surface.

You also have to put characteristics into that surface to protect it from scuffing, so you do that by adding a lubricant so that when something hits the surface, it slides. But you can't have

it with so much lubricant that the ink won't adhere to it, so you have to develop additives in this film that would glue to the surface on drying and give you a marriage of those two properties.

And this represents the ink that the ultimate customer would apply to this particular product.

Q. (By Mr. Cahillane) These were all, I take it, qualities that you had to be concerned with in developing this product?

A. Absolutely. And uncover one, you had to be careful you didn't destroy something you previously obtained.

Q. The initial reason for developing the coating was the environmental problem? [66] A. Yes.

Q. Did the coating you develop, aside from solving that problem, have any other advantages? A. Yes. It had no hazardous waste. The material that this product used would not be classified as hazardous waste.

Q. Did you meet these criteria? A. It exceeded it. It took a broader range of inks from a broader range of printing processes, and gave outstanding adhesion.

It also gives a gloss and better hold-up. That was an outstanding surface that the printer had to apply his coating to.

Q. So that was most significant to the ultimate customer? A. Yes.

Q. Now, I believe you mentioned you had another diagram to show the jury. A. Yeah. This is kind of — you remember the diagram we had with the solvent base, this is the same setup with water base.

Now, the solvent, if you dissolve it, it's like putting sugar in your coffee. It dissolves right away. The coffee stays pretty much the same.

[67] When you are working with water-based systems, these resins don't dissolve in water. But they do chemically modify them so that they swell and kind of adhere to water. They become gooey, like taffy.

And these solutions therefore are a thicker — one of the problems with the solution like that is that these cells have to be thinner, because you can't get — you can't smooth it off

even enough, and handle it with the right coating. So you have to put more cells of finer dimensions which, incidentally, results in an economy, because when you reduce the size of the cylinder, you put on less coating.

This size cylinder is used for water. You could not use it for solvent because solvent systems applied from a fine cylinder do not become continuous and become iridescent. It is not a desired property. It's kind of a rainbow effect on the surface.

So with the water base you can, because of the tendency of these molecules to coagulate and string together.

Also, I told you the solution was level in the ink with the solvent, and in this case, [68] because of that characteristic, this taffy-like appearance, the cylinder revolves, pulls down the surface and these cells coming down here tend to trap air.

So you have to put something in the coating to dispel that air. That's another great major thing we did in our product, that I did on the product, was to dispel the air in these coatings.

Prior to introducing this particular additive, this roll, when it came down here, the water base would dry. But it wouldn't redissolve. So on running, this coating would build up and in effect make them smaller and periodically, the man had to be stopped, and the surface cleaned with acid to remove this residual coating.

With this additive to effect the thing, the guys on the machine noticed that all of a sudden it would clean up, so we were able to put an additive in this to eliminate the bubbles and to stop the build-up on the roll.

Finally, this is the angle we had for the solvent base. You remember the ink fell back down, this being of a taffy characteristic, the doctor blade has to be put in very sharply so that [69] in effect clouds off the excess ink.

Q. Where is the doctor blade? A. This is the doctor blade.

Q. That's what you're referring to? A. Yes. With the solvent base, the bottom lining represents the angle. In this particular situation, it's flat. So when you are developing a coating, not only stating the previous things I talked about, you have to address these, too.

What you do here cannot affect the properties of the final product.

Q. Now, for the time being, you have explained that diagram. Perhaps we could turn that off right now.

Now, I believe when we left off, Mr. Biggins, at some point in time you felt you had developed a water-based coating, which meant that these characteristics that you just described.

A. Yes, I did.

Q. Where had you done that work? A. I had done it primarily at home, in my wife's kitchen, with a little bit of objection.

Q. Why did you do it there? A. The equipment at Hazen was not suitable to give me the temperature control that I needed.

[70] When you work with these systems, you do what's called cross-linking, too. Cross-linking takes a considerable amount of heat, and you have two temperatures to be involved in.

One, to try the paper, and another one to cause this cross-linking. And the equipment at the Hazen laboratory that was available couldn't do it satisfactorily.

Q. Did you also do some work on this at Hazen? A. Yes. Hazen has a Geiger press with a small — the roll is that much in diameter, gravure cylinder, and you put little short pieces through and see the effect of laydown on the foil or paper.

Q. And do you recall approximately when it was that you felt that you had a water-based coating that would be acceptable? A. I believe it was in March of 1980.

Q. And at that point in time, what did you do? A. I told the Hazens about it.

Q. And anyone in particular, both Hazens? A. Tom. I worked almost exclusively with Tom.

Q. Did you take the product to Tom Hazen? [71] A. Yes.

Q. What did he say or do? A. He criticized it. And perhaps somewhat justifiably. It wasn't the finished product, but it was good enough to be presented, and he wanted some additional improvements on some of the process.

Q. And what did you do? A. I went there to the laboratory and kept on the process of elimination, and developed, got various additives to enhance the properties he wanted.

Q. And did you bring the product back to Tom Hazen?

A. Yes, I did.

Q. What happened on that occasion? A. He wasn't thrilled with it. He criticized it again. And eventually, we just ceased doing this routine.

Q. Now, this product, this coating that you have, at this point in time what would it have been used for at Hazen Paper Company in terms of its products? A. Actually in September of 1980, I had a product that was useful to replace the nitrocellulose and the vinyl.

[72] Q. Which goes in what? A. Foil. On foil and on some other films.

Q. And did there come a point in time when Hazen Paper Company did begin to use your coating on some products?

A. Yes.

Q. When was that? A. About the time of March, because the coating had a very thin —

Q. March when? A. 1980. Excuse me.

Q. Go ahead. A. It had a very thin amount on it; because the company didn't have to pay the profits from outside vendors to mix it, it had considerable economy.

Hazen at the time was making a product of gold and silver lacquer on foil. They called it Econosilver and Econogold. It was a bottom line product. It was sold without any quality guarantees. And as long as the coating adhered to the foil and got out the door, that was the product.

And initially, because of the economics involved with the coating, it was — that was the first use that it got in the company.

[73] Q. At this point in time they weren't willing to use it on anything else? A. No.

Q. And I take it from what you've just said that any additions to the other quality of the coating that you just described, that

this coating was less expensive than the other coatings?

A. Yes, considerably less expensive.

Q. Now, did there come a point in time when the product began to have greater acceptance at Hazen Paper Company?

A. The next thing that I recall was I went down to the machine floor one time and they were running a product called Birds and Bees. It's used for the spine on children's books, that the youngsters buy.

And one of the requirements of that particular product was to have an extreme amount of slip, because it had to be protected from scuffing with the rough use of children.

And one of the guys in the laboratory made a trial on his own with the water-based acrylic, Biggins' acrylic, and added a lot of slippage into it. It was so slippery you could barely hold it. Had a hard time wiping it up, but [74] it worked successfully and it was used from that point on for that application.

Q. And did it — was it acceptable and successful in that application? A. Yes, it was used from that point on.

Q. That was approximately when? A. In mid 1980's.

Q. Now, at some point in time, did the Hazens recognize that this product could be used for a broader applicability?

A. In September of 1981, I saw a memo, I got a copy of a memo from Tom to Bob Hazen and Steve Smith, who was Sales Manager at the time, telling him that the product seems to have some promise, and because of pressures of the environmental regulations coming down the road, he wanted to get it into the field.

And it was suggested that it be put into the pressure sensitive field, the sticky paper that I showed you earlier.

Q. Now, this coating that you had developed, did it have a name? A. It was called Biggins' acrylic.

Q. Who called it that? A. Tom Hazen.

[75] Q. Did anyone else? A. Everybody after that.

Q. Everybody where? A. In the company it was called Biggins' acrylic.

Q. Now, did you become involved in — well, let me ask you.

You said that the decision had been made to market this to the pressure sensitive industry? A. Yes. To try to get it into that field.

Q. What you're talking about here is what of the materials that you have there in front of you? A. This material.

Q. This is the material with the adhesive on the back?

A. That's the market we were addressing.

Q. Ultimately goes to make stickers, and the ultimate customer, commercial customer prints on it? A. That's right.

Q. And did you become involved in the effort to market that product to the pressure sensitive industry? A. Yes.

[76] Q. In what way? A. The company had an agreement with a gentleman named Bob Hutchinson to handle all their production in this market.

And on his shoulders was the task of introducing it and getting it accepted by customers.

And you heard him referred to earlier. He did an outstanding job.

Q. Mr. Hutchinson, was he an employee of Hazen Paper Company? A. No, Mr. Hutchinson was an independent representative or broker. He would sell a product and Hazen would ship it to his customers, and then they would make arrangements about commission.

Q. Mr. Hutchinson was paid commission? A. Yes.

Q. Now, you were describing how you got involved in the effort to market this to the pressure sensitive industry.

A. The market is dominated by a company named Fasson. Fasson is located out in Ohio.

And Fasson is pretty sophisticated. They had a technical arm that evaluated all submissions and tested it rather severely. And if approved, then you could supply a test roll for [77] evaluation on their production department.

Mr. Hutchinson asked that I go with him to this technical department and discuss the properties that they saw were satisfactory, and submit samples of our paper.

Q. Did you do that? A. I did.

Q. And who did you meet with? A. I met two people. Marjorie Spicen, I think was one lady, and Scott Mingus, who actually did the testing.

Q. And I take it you went with Mr. Hutchinson? A. Yes, we went together.

Q. What was the result of this trip? A. We passed the test with flying colors. And they ordered a small roll.

Q. Fasson did? A. Fasson did.

Q. And what happened after that with respect to this market? A. It started to — they tested it, performed very nicely on their equipment. They sent it to customers in the field and it performed nicely by their ultimate customers, the printers, [78] and they started to use it.

MR. CAHILLANE: Your Honor, I now have some charts that I would like to show the jury and Mr. Biggins could identify the information on them, with the Court's permission.

THE COURT: Very well. If you could put them on the easel.

MR. CAHILLANE: Your Honor, if I may ask if the jury is able to see this adequately.

THE COURT: I'm sure they can.

MR. CAHILLANE: Thank you, your Honor.

THE COURT: Go ahead.

Q. (By Mr. Cahillane) Mr. Biggins, during the course of this litigation, have you been through our office provided with certain information about Hazen Paper Company's sales and products? A. Yes, I have.

Q. And as a result of that information, were you able to draw up for us with the aid of your computer a chart showing the use by Hazen Paper Company of your products? A. Yes, I was.

Q. During certain years? [79] A. From the time of my — when I invented it until 1989. Excuse me, 1986.

Q. Did you have any information about any other years?

A. No. My information stopped at 1986.

Q. The information that was supplied was what? A. Was pounds of resin purchased to make the water-based coating.

Q. I'm going to show you a document and ask you if you could identify this? A. Yes. This is the information that was supplied to us by Hazen Paper Company.

MR. CAHILLANE: Your Honor, I would like to introduce this as an exhibit.

THE COURT: Has counsel seen it?

MR. CAHILLANE: I'm sorry.

MR. MCGINLEY: No objection.

THE COURT: Exhibit 6 in evidence.

MR. EGAN: 6? I have 7, your Honor.

THE COURT: All right. So it will be 7.

MR. EGAN: Thank you, your Honor.

[80] Plaintiff's Exhibit 7 *marked in evidence.*)

Q. (By Mr. Cahillane) The diagram that you've done there, Mr. Biggins, the information on the diagram you actually have is a picture of what? A. Drums. I thought it would be easier to explain the drums purchased, the material, how it arrived at the company.

Q. The information here in and of itself does not say drums.

A. No, but one drum is 492 pounds. By converting the pound numbers to that, I drew the diagram.

Q. If you could explain this diagram in terms of the time when you were working on the product and its ultimate acceptance, and what happened beginning in I think the first year there, 1979. A. Right. That's when we purchased one drum. We had arrived at a coating on the machine that held promise, and we purchased one drum.

The following year, 1980, we purchased eight drums. In '81, we purchased seventeen drums. This represents when we started using the Econo grade.

[81] In 1982, this indicates the use for some of the pressure sensitive and for the Golden Books material.

In 1983, you can see there was a big jump. It started to be used by the pressure sensitive field. I believe that's about fifty drums. Maybe more.

Q. This is after your and Mr. Hutchinson's trip to Fasson?

A. Yes.

Q. And the following years, the use of the product I take it continues to increase? A. It shows the increase of the material. Substantial increase in 1986.

Q. And you were not provided with any of the information after that time period? A. No, I was not.

Q. Now, I would like also to show you another chart.

I ask you if during the course of this litigation you were also provided through our office with information — you were also provided information concerning the sales of the Hazen Paper Company? A. Yes, I was.

[82] Q. And on the basis of that information, did you give us the information in order to draw the chart? A. Yes, I did.

Q. Okay.

And this chart shows the — well, do you know what the blue bars are? A. That is total sales volume reported by Hazen Paper Company 1977 to 1989.

Q. Okay.

And 1977, is that when you started with the Hazen Paper Company? A. Yes, it was.

Q. And when was it that you were fired from the Hazen Paper Company? A. Right about there.

Q. 1986? A. 1986.

Q. Now, the sales when you began at Hazen Paper Company in 1977 were about how many? A. About eight million dollars.

Q. And by 1986, they were approximately how much?

A. Around thirty.

Q. In 1989? [83] A. Forty-two, 43 million dollars.

Q. You also have on that chart some red bars, which as we have explained, they are referred to as Hutchinson and Miller sales? A. Yes.

Q. Could you explain for us what that represents? A. This represents Mr. Hutchinson's commission, selling the Hazen products; the pressure sensitive line. Also includes a little bit of what the lottery ticket business is, too.

Q. Commission or sales made? A. Sales made. Excuse me.

Q. And in 1982, at the time that you were commencing to try and market that coating to the pressure sensitive industry, that was approximately how much? A. Between one and two million.

MR. MCGINLEY: May I interject here? I didn't hear what the foundation was for the Hutchinson, for the red bars, Mr. Cahillane.

MR. CAHILLANE: As to how we developed the information?

MR. MCGINLEY: The basis for that information.

[84]—THE COURT: Repeat it.

Q. (By Mr. Cahillane) Now, Mr. Biggins, during the course of this litigation, did you go with me to Sullivan and Hayes' office in Springfield to review certain documentation concerning Hazen Paper Company sales? A. Yes, I did.

Q. And included in that documentation was there a category or listing of the total sales made by Hutchinson and Miller on behalf of the Hazen Paper Company? A. It was available to us, yes.

Q. And based on that information, did you copy down the number, amount of sales that Hutchinson and Miller had done for Hazen Paper Company in the years 1982 to 1986? A. We did. Yes.

Q. Was this your basis for making this chart? A. Yes.

Q. And again, were you provided with any information after 1986? A. No.

Q. And if I may, where we left off, I believe you described where Mr. Hutchinson stood in [85] 1982; by 1986 when you were fired, approximately how much were those sales?

A. Approaching 10 million dollars' worth of sales.

Q. All right.

MR. CAHILLANE: I would like, your Honor, to offer each of the charts as exhibits.

THE COURT: All right. I thought they were already in.

MR. CAHILLANE: I don't think so. I offer them.

The raw document that was offered is not exactly the same thing, because he converted it to drums. This is not a picture of the chart.

THE COURT: That's 7?

MR. CAHILLANE: Yes. So this would be 8 and 9.

THE COURT: The others will be 8 and 9.

(Plaintiff's Exhibits 8 and 9 *marked in evidence.*)

MR. CAHILLANE: For the Court's information, your Honor, if it does not matter, this would be a convenient break-off point for us.

THE COURT: Are you on a new [86] subject now?

MR. CAHILLANE: Yes.

THE COURT: All right. Then we will recess until two o'clock this afternoon.

Jury may file out.

(*Recess taken.*)

* * *

[87] THE COURT: Plaintiff may proceed. Return to the stand.

WALTER BIGGINS, RESUMED

CONTINUED DIRECT EXAMINATION BY MR. CAHILLANE

Q. Mr. Biggins, I believe we left off with a period of time when you had developed this coating and it had gained customer acceptance.

Did you at any time at Hazen Paper Company have access to or see documents or records which indicated whether or not that product was profitable for Hazen? A. Yes. As a member of the Executive Committee, I had access to that information.

Q. What kind of information was that? A. It was a computer printout.

Q. And this computer printout would show what?

A. Showed just about everything about a product, broken down by individual run. The cost of the components. Cost of the machine time to produce it. And the percent profit.

Q. And did you see such computer printouts [88] for products made with your coating? A. I did.

Q. And do you know — and was there included in that information the percent profit for those products? A. Yes, there was.

Q. Do you know what that was?

MR. MCGINLEY: Objection to that, your Honor.

THE COURT: Well, if he knows.

How would you have personal knowledge of what it means?

THE WITNESS: Part of the technical functioning, your Honor, is to plan costs when you are developing a product. So it had impact on what I did.

Then that's how I knew what it was.

THE COURT: Did you have personal knowledge of what the figures meant?

THE WITNESS: This printout was very carefully labeled.

THE COURT: You may answer.

THE WITNESS: Around thirty percent.

Q. (By Mr. Cahillane) Now, with respect [89] to that coating or formula, did you receive any offers for it from anyone else, other than Hazen Paper Company? A. Actually I did.

Q. And when was that? A. After it was developed and seen in the marketplace.

Q. And who was it that made these offers to you? A. Several vendors. People that made coatings.

Q. And what were they offering you? A. Two in particular offered me an opportunity to sell it overseas.

Q. And what did you tell these people? A. I told them that it was completely unethical and I wouldn't do it.

Q. Now, did you also have other accomplishments at Hazen Paper Company with respect to other job duties that you had, Mr. Biggins? A. Yes, I did.

Q. Such as what? A. Investigating complaints, satisfying customers, on my own or with people that were responsible for selling.

[90] I was also responsible for quality control.

Q. What did that entail? A. That was probably the next test that I had to accomplish for a goal in the company, and I had to set up a program that was not in existence.

Q. And what did you do? A. Actually it's setting up a quality control program. It's rather involved.

Quality control program is only as good as the people who use it. And the people who use it are only as good as their awareness of what they do, and how it can affect the product and know how it's used ultimately, and develop self-esteem to have input and motivation to make good products.

Q. When you went to Hazen, what was the quality control system that existed at that time? A. The quality control program consisted of at night the orders came down from the office to the laboratory for the following twenty-four hours' production.

Attached to every order was a quality control sheet which listed items — no wrinkles, no bugs, no bumps, so forth. A little check mark beside it.

[91] When the order is received in the laboratory for the following day, the people in charge of quality control, they were color matchers, really very good color matchers, would check off all the sheets before it had even been assigned to that machine.

So the quality control in effect was done at four o'clock the day before the product was run.

Q. What did you do to change this? A. First off, I had to work with the people in the laboratory to acquaint them with the fact they had methods to judge quality and to measure it, and to control it.

And the biggest part was working with the machine operators, and the people on the floor at Hazen really responded very well to this quality control program.

I had to show them how the products were used. I had to make them aware of what was required to make these products satisfy a customer. I had to install process control systems for them to control the machines they were running to produce the product that was necessary.

As a matter of fact, that was so [92] successful that when I first arrived there, when a run was put on a machine, the operator started from ground zero and they had to determine all the setups on the machine to get a good product.

This required running some, a small part on the rewind, take a sample into the laboratory, have the quality control guy in the lab make a judgment, go back to the machine, make an adjustment, start the machine, get a sample. Sometimes this could take an hour or two, which is very valuable time on a production.

With the lottery business in particular, when I installed the quality control program, they could start the machine up and run about fifty feet of paper, take it to the laboratory and pass some very rigid tests, be right on the money, push the button and run, and the guys were delightful.

So we had to get people on the machine aware of what control, how to set it up and how to make the product. It got to the point where the operators would go in and run tests themselves.

Q. And the tests, did that involve color control? A. When you do any color, you do gold foil [93] or the printed design, color is very important.

The printed designs, particularly, when they are running, in order for cosmetic houses at Christmas, they probably take two or three runs on the machine, and paper was run continually. Sometimes around the clock.

And when it was sent to the person who made boxes with it, he will arbitrarily unpackage skids and he could take a roll from the beginning of a run and the end of the run, and if the quality control was not in control, it would be two different boxes. And if it ended up in Steiger's, he would have different colors, and it would reduce the appeal of the product.

So color matching was a very exacting science. They had people in the laboratory, particularly on the day shift who had extremely good color eyes. They were very, very good. They knew what to make, what adjustments to make in the color to produce the shade they wanted.

What they didn't have was a reference point. They would go from one roll and then the next time they took the end roll off the run and started the next run with it, or on a daily basis, so it was possible to make a drift.

[94] Early on in my career at Hazen I purchased a Hunter color meter that assigned values to various shades. Also to measure the intensity of color, whereby the people in the laboratory could assign a numerical value.

It was kind of humorous because when I introduced it, they resented it, and then they found out how good they were and they yelled like blazes when the bulb burnt out.

Q. Now, during this time period, in 1982 when the product, the coating you had developed had gained acceptance in the marketplace and it was being sold to Fasson by Mr. Hutchinson, what was your salary at the time, Mr. Biggins?

A. In the mid '80's, it was around thirty thousand.

Q. What was your starting salary at the Hazen Paper Company? A. I started at the Hazen Paper with an annual salary of \$26,000.

Q. And in 1983, when you were making around thirty thousand, I believe you said? A. Yes.

Q. Were you happy with that? A. No.

[95] Q. Why not? A. Because being a member of the Executive Committee I had access to figures. We would go to the monthly meeting, we would get figures of how well the profitability of the company was. And I could see that Mr. Hutchinson — I don't want to take anything away from the man, as I said he really was an outstanding salesman. But his salary was increasing in leaps and bounds, and he was making big salaries, six figures, hundreds of thousands of dollars on something that I had developed.

And I became annoyed.

Q. And what did you do about it? A. I requested a luncheon appointment with Bob and Tom Hazen to meet at the Yankee Pedlar.

Q. What happened at that meeting? A. I pointed out my contribution to the company and the water-base and many, many other product improvements I had made that were profitable and resulted in good quality.

I talked about the quality control program. And at that luncheon meeting they gave me a ten percent increase.

Q. No, up to that point in time, had you [96] previously received any merit increases? A. I never received merit increases at Hazen that I didn't have to beg for.

Q. Now, after that, in 1984, did you have another discussion with the Hazens about your salary? A. Yes. The increase, a nominal increase for the plant came through, and I was included.

I requested another luncheon appointment. We went through the same routine. I got eight percent.

Q. Were you happy with that? A. No, I was not.

Q. Why not? A. Because once again, I could see Mr. Hutchinson was going up in order of magnitude. He had gone from — well, one or two hundred thousand to over \$300,000 in profit, and I was staying relatively level.

Q. And did you do something about that? A. Yes. It was the custom for myself and Tom Hazen to meet on a weekly basis, and I gave him reports on the technical department. He gave me input on things that he wanted addressed.

We used to have them in his office and [97] it became so hectic with phone calls that he used to meet me at lunch, and discuss these things.

In July of 1984, after my last increase, I approached Tom Hazen at one of these meetings at the end of it, and I said I wanted to discuss something that was bothering me greatly. And I pointed out that I had to keep begging for money and getting measly increases, while Mr. Hutchinson's commissions were rising dramatically.

Q. This occurred where? A. This occurred at Kelly's Lobster House in Holyoke.

Q. And was there something in particular that you asked Mr. Hazen for? A. At that meeting, I told him that I thought I was worth a hundred thousand dollars minimum.

Q. And what did Mr. Hazen say? A. I can tell you the exact quote. He said, "I hear you."

THE COURT: What?

THE WITNESS: "I hear you."

Q. (By Mr. Cahillane) And did he say anything else? A. He told me that he couldn't give me the [98] money — the salary increase, what I requested in money. Nobody in the company, he said, was making that kind of money. Even Bob and himself weren't.

But he told me that he would be willing to give me a piece of the company in stock, and that I could — my fortune could increase as the fortunes of the company did.

I accepted it.

Q. Now, at that point in time, approximately what was your salary? A. I think it was \$44,000.

Q. And did Mr. Hazen indicate to you how much stock he was talking about? A. He told me he was making up the difference between my salary and \$100,000 in stock.

Q. Hundred thousand dollars being the salary that you had requested? A. Yes.

Q. Now, after you had agreed to that, did he say anything else? A. He told me he would have to talk with his accountants and his lawyers and work out a plan.

Q. Did he discuss the Biggins' acrylic with you at all?

A. Yes. As a matter of fact, he did.

[99] He said in return, he wanted me to sign my rights to the coating over to him.

Q. And what did you say? A. I agreed.

Q. Now, after that, Mr. Biggins, did you receive stock in the Hazen Paper Company? A. I did not.

Q. At some point, did you talk to Tom Hazen about this?

A. Yes, I did. I was very patient. I trusted the man. I thought he was a man of his word.

He had some personal family problems that were taking a lot of his attention and I was understanding of that. And so I let approximately a year pass.

Q. Did you talk to him about it again? A. Yes, I did.

Q. When was that? A. We had attended a Congressional hearing in Boston on the environment, particularly Superfund sites, and on the return trip I reminded him he had made a promise to me the previous year, and that I hadn't heard anything about it, and I was inquiring of the status of it.

[100] Q. What did he say? A. He told me that he was having some legal problems with it and it was in the hands of the lawyers.

Q. Now, after that, Mr. Biggins, were you involved in another development on behalf of the company? A. Yes, I was.

Q. And what did that concern? A. Up to that point, Hazen was unable to laminate clear film to paper and make a successful product, and I developed two methods for achieving this.

Q. Do you have a diagram here to describe this process? A. Yes, I do.

MR. CAHILLANE: Your Honor, I would like to ask once again if I could make use of the overheard projector.

THE COURT: All right.

Q. (By Mr. Cahillane) Now, this process you are talking about is called what? A. This is called a dry lamination process. Actually two processes, a wet and a dry lamination. [101] But this depicts the dry setup.

Q. How did this work? A. This is the same laminator that we had, but you have no paper at this end. All we have at this end is the film, or the foil. In this case, it was film.

And we pass it over the section that normally applied adhesion down to the machine, up to the gravure station, and applied some solvent-based adhesive to the film. At that point, the film that passed through the oven and came out the other end, and this nip point, we introduced paper that adhered to the adhesive-coated film, nipped it together, and wound it up.

Q. Now, do you have another diagram which describes this in more detail? A. Yes. One of the problems with this is the fact —

Q. If you could just give me an opportunity to show these to the Judge and Mr. McGinley.

THE COURT: You've been using the word lamination at will here. No one said anything, but I'm just — I don't know how many of the jurors may know what you're talking about. [102] What do you mean by lamination?

THE WITNESS: When you put one material against another with adhesive. That's called lamination.

You will see it in churches, they make it with the beams, they put lumber and glue, plywood, those are laminations.

When you put two, usually sheets, together with an adhesive.

THE COURT: All right.

Q. (By Mr. Cahillane) You were going to describe this diagram, I believe? A. Okay.

This particular diagram is that nip we were talking about.

Here's the paper coming in, like if you magnify it, it's very rough material.

And here's the adhesive layer on the film coming into here.

And as you see in the nip, you have holes — voids, where the adhesive doesn't flow in.

When you have a clear film and you laminate it to something, if you have a little bubble of air, it reflects the light and it — they call it a shiner. It glares at you. And every one [103] of these materials was a shiner.

And this is what Hazen had never been able to overcome. The solution was — I got this from my father who years ago made false teeth, and said if you want to get rid of air in anything, you soak it with water. So I introduced water.

If you introduce water to the area where the air is trapped, you don't allow it to get in this construction. Then you get rid of the dryness.

In this particular case, that adhesive I was talking about was a solvent-base, was a polyurethane, and moisture helped it to cure.

If an adhesive is not cross-linked and got tough, and the moisture helped it to cure, so the moisture here greatly increased the final property of the paper.

And what I did to do this, I thought it was rather novel, while we were running the paper and we were getting the shiners, I remembered what my father said.

I went to the bubbler, got a cup of water and threw it on the paper. Poured it right on the paper. It ran up to the nip and spread across, and from that day on, we never had another [104] shiner. All we had to do was keep a fine mist of water dropping onto the web, running into the nip, and we had a successful dry lamination.

Now, I mentioned what lamination — what lamination is, the normal lamination procedure, but the adhesive comes like in this end of the machine. When the foil or film will be wound together it made it extremely wet.

The drawback to this was it didn't dry out the processing through the machine because the moisture couldn't come through the film, which was on the top. So it wound up wet.

The manufacturing guys had fits because they had a roll of wet stuff. They had to wait probably a couple hours to see if it was successful. It always was. But that was a worry.

So because of the wetness of the roll, they requested I develop this system. So we had two systems to put Hazen into a new market that they had been excluded from for several years.

Q. Is that it for now with the diagram? A. Yes.

Q. Thank you.

Now, this development that you just described, Mr. Biggins, did this result in another [105] conversation with Tom Hazen about stock? A. Yes, it did.

Q. How did that come about? A. In December of 1985, I was in on a Saturday, I was in the office and Tom congratulated me on this achievement. He bragged that we had taken a mil-

lion dollars worth of our business from Hampden Paper Company, competitor up the street, and he said it opened a sizeable new market for Hazen Paper.

Q. And what did you say to him? A. I said thank you for the compliment, where's my stock.

Q. And did he respond to that? A. His response to the statement was: Oh, I got to take that off and dust — take that out and dust it off?

Q. Now, on that occasion or on the prior occasion that you described, did Mr. Hazen ever deny to you that he had promised you the stock? A. Never.

Q. And after that December 1985 conversation, did you receive stock? A. Never.

Q. After that December 1985 conversation, [106] did anything else happen in terms of your relationship with the company? A. I noticed a distinct change in their attitude towards me.

Q. They being who? A. Tom and Bob Hazen.

Q. And what was that change that you noticed? A. I used to travel off and on occasionally with Mr. Robert Hazen to a lottery ticket company, in particular, and we always traveled together on the plane. He got the window seat and I got the middle seat.

After this took place, he sat in one side of the section of the plane, and I sat on another, and I still didn't get the window seat.

THE COURT: Who did the planning?

THE WITNESS: He did.

THE COURT: That was the routine from the start?

THE WITNESS: That was the routine. He arranged the trip and got the tickets, and he usually gave them to me at the airport.

THE COURT: When you were last employed by the company, did you receive any salary [107] increase?

THE WITNESS: My final check, I got an increase, your Honor. After I —

THE COURT: Nothing during the previous year until your last check?

THE WITNESS: After I had been fired, they paid me my last check and there was an increase in it.

THE COURT: I'm asking for the previous year before you were fired, was there a salary increase or adjustment in your salary?

THE WITNESS: There was an annual cost of living that everyone got which occurred every year. Yes.

Q. (By Mr. Cahillane) Now, were there any other changes in the behavior of the Hazens after December of 1985? A. I ceased having weekly meetings with Tom Hazen.

Q. Now, in May of 1986, near the end of May of 1986, did something happen with respect to your employment at Hazen Paper Company? A. Yes, I was requested to come into the office on Saturday for a meeting with Tom and Bob. It was the Saturday of the Memorial weekend, the [108] 24th of May that year.

Q. Who had requested the meeting? A. Tom Hazen had asked me to come in.

Q. Did you go to this meeting? A. Yes, I did.

Q. And what happened at that meeting? A. I was taken aback. The opening statement was that the Hazens were outraged at my actions.

Q. Well, who was at the meeting, Mr. Biggins? A. Tom Hazen sat opposite me. Bob Hazen sat to my right, his back towards me.

Q. I understand you went into the meeting with Tom Hazen facing you, and Robert Hazen sat with his back to you?

A. Yes. Tom did the talking.

Q. Did Robert Hazen talk to you during this meeting?

A. No.

Q. Did he turn around and face you? A. Once very briefly.

Q. Now, what was it that happened at the meeting; what did Tom Hazen say to you? A. He told me he was outraged

with the [109] business that I had started with my son; he said it was an embarrassment to him.

He asked me to divest myself of ownership of the companies. To take the name off the W.F. Biggins Associates and to furnish him a list of customers, and he told me he was going to prepare a confidentiality agreement for me to sign.

And if this didn't come to pass, we would sever relationships.

Q. Now, you were, were you not involved to some degree in a business with your son? A. Yes.

Q. That was W.F. Biggins, Inc.? A. Yes.

Q. Was there another business, too, that he referred to?

A. There was a business we started two years previously called Proclamation.

Q. Was that in existence at the time? A. No, it had been dissolved.

Q. How long had it been out of existence? A. Oh, two years at that point.

Q. Now, you indicated that Bob Hazen — I'm sorry, Robert Hazen, Thomas Hazen at the meeting told you that they wanted you to divest your [110] interest in these businesses?

A. Yes.

Q. And that he wanted you to sign some sort of agreement?

A. Yes.

Q. Did he tell you what kind of agreement? A. He called it a confidentiality agreement, I believe.

He handed me a typical one. He didn't have one prepared himself.

THE COURT: What type of business was it that you had entered into with your son?

THE WITNESS: The one that was defunct at that point, your Honor.

THE COURT: The one that was in existence?

THE WITNESS: It was the compliance of Right to Know for small and medium-sized businesses.

THE COURT: Did it have anything to do with the business you were working under contract with the Hazens for?

THE WITNESS: It had nothing to do with their production or their profitability.

—One of my responsibilities was [111] compliance with the Government regulations, and one of the regulations I had to comply with was the Right to Know law. It was a nuisance to me, and I recognized that it was an opportunity for my son to start a business, serving people this way.

THE COURT: At the time you entered into the relationship with the Hazens, was there any kind of understanding that you were giving them full attention and one hundred percent of your time?

Was there anything mentioned about that at all?

THE WITNESS: No, no, sir. There wasn't.

Q. (By Mr. Cahillane) At that time, was Thomas Hazen aware of the existence of Proclamation and W.F. Biggins, Inc.? A. Yes, to avoid any embarrassment on his part, I told him about both ventures.

Q. When did you tell him about Proclamation? A. When I started in 1983, about the Summer of 1983.

Q. And when did you tell him about W.F. Biggins, Inc.?

[112] A. That was in 1985. Probably early Summer of 1985.

Q. Did you explain this to Mr. Hazen at this meeting?

A. Yes.

Q. And what was his response to that? A. He said that's fine, no problem at all.

Q. Now, before we go back to those companies, when you were at this meeting, you were to be given an agreement at some point? A. Yes.

Q. And after that, did you receive an agreement from Tom Hazen? A. I received an agreement dated May 30th, and was handed to me on June 3rd.

Q. June 3rd. Okay.

Now, did you also receive a memorandum or a letter with that? A. Yes, I did.

Q. I'm going to show you a copy of a document, and ask you if you can identify this? A. That's a copy of the letter of the company, the agreement.

MR. CAHILLANE: I would like to offer this in evidence.

[113] MR. MCGINLEY: No objection.

THE COURT: Exhibit 10.

(Plaintiff's Exhibit 10 *marked in evidence.*)

Q. (By Mr. Cahillane) Along with this memo, was there an Employee Confidentiality-Patent Agreement attached to it?

A. Yes, there was.

Q. I'm going to show you a copy of this document and ask you if you can identify this? A. Yes, that's the agreement.

Q. This is the agreement that was given? A. Yes.

MR. CAHILLANE: I would like to offer this into evidence, your Honor.

THE COURT: That was attached? Was it physically attached?

THE WITNESS: I think it was probably clipped to it.

THE COURT: It probably should be part of the same exhibit then. Exhibit 10.

MR. MCGINLEY: No objection, your Honor.

THE COURT: Why don't you refer to it specifically as 10A.

[114] (Plaintiff's Exhibit 10A *marked in evidence.*)

Q. (By Mr. Cahillane) Now, with respect to Exhibit 10, the memo, Mr. Biggins, that you received on June 3rd, does it not in the first paragraph ask for you to return the agreement at some point in time? A. It doesn't specify a time.

Q. First paragraph of the memo? A. Excuse me, yes.

Q. And what was your understanding at that point in time as to your employment situation? A. I recognized it was in jeopardy. I was perplexed.

Q. What was your understanding as to the relationship between this agreement and your employment situation? A. I think it was pretty clear that I had to sign it in order to stay at Hazen Paper Company.

Q. And what did you do with this agreement? A. I asked permission to have my family attorney look at it.

Q. Asked permission of whom? A. Mr. Thomas Hazen. I asked him if he would pick up the legal fees for this service. He [115] stormed out of my office and called me on the phone and said absolutely not, and hung up.

Q. Did you then give this agreement to your lawyer?

A. Yes, I did.

Q. And who was that? A. Mr. Dana Goldman.

Q. Mr. Goldman is an attorney here in Springfield?

A. Yes.

Q. I believe you said you had been given the agreement June 3rd, and told to return it signed by June 9th? A. Yes.

Q. And did you bring the agreement to Attorney Goldman?

A. Yes, I did.

Q. And did Attorney Goldman provide you with a letter advising you concerning the agreement? A. Yes, he did.

Q. I'll show you a copy of a document, and ask you if you can identify this. A. That's the letter that he sent with it.

Q. Okay.

MR. CAHILLANE: I would like to [116] introduce this as well, your Honor.

MR. MCGINLEY: Object to that, your Honor. Several reasons.

THE COURT: Let me see it, please.

(Bench conference held.)

THE COURT: Your objection?

MR. MCGINLEY: My objection, your Honor, is it's rank hearsay to begin with. It is a — as you can see, one of the paragraphs here, fourth one down, it's a personal recommendation for Mr. Biggins. The only way to find out is to cross examine Mr. Goldman as to how he can give that.

It's also a conclusion of law that may or may not be right, in which he opines that that particular agreement is in violation of the law.

THE COURT: That I see right off the bat.

MR. CAHILLANE: I'm not offering it for the truth of the matter asserted, I'm simply offering it to show that Mr. Biggins received certain advice.

THE COURT: The jury won't understand that.

Were you going to have Mr. Goldman testify?

[117] MR. CAHILLANE: I can, your Honor, if you wish. We have subpoenaed him and told him we might need him.

MR. MCGINLEY: I would stipulate that for purposes of trial, if he wants to ask did he see an attorney who gave him advice, without having to get into the specifics of the report.

THE COURT: Yes. All right. I'll exclude that.

(End of bench conference.)

Q. (By Mr. Cahillane) As a result of this, Mr. Biggins, did you have some time after between June 3rd and June 9th, or on June 9th, what was your understanding of the Employee Confidentiality and Patent Agreement that had been given to you by Mr. Hazen? A. That I gave him exclusive rights to everything I ever thought or dreamed. And I was prohibited from working for anybody after two years' cessation of the employment with Hazen Paper Company.

Q. Now, let me just — the first thing you mentioned, do I understand you're saying that it's your understanding that this agreement meant that you had to give the Hazens the right to — any [118] developments that you had made? A. Yes.

Q. And the agreement also had a provision which restricted what jobs you could hold? A. Yes.

Q. What was your understanding of that? A. That my sole effort was going to be with the company and no outside efforts whatsoever I could undertake without their express permission, which could be withdrawn at any time.

THE COURT: Your state of mind, let me ask you while you were employed with the Hazen Company. What was your opinion in your mind as to your working conditions?

What did you feel you were doing for them; did you think you could go to work for them, draw a week's pay, and then work for anyone else on the outside?

THE WITNESS: No, I didn't, your Honor. I did not.

THE COURT: Well, how did this change then? How did this agreement change from your working conditions through the years when you were working for Hazen?

THE WITNESS: No change. That's [119] why I agreed to sign it.

THE COURT: All right.

Q. (By Mr. Cahillane) With respect to those outside businesses, Mr. Biggins, when Proclamation was in existence, did you work full time at Hazen Paper Company? A. Yes.

Q. Forty hours a week? A. Yes, I did, more than that.

Q. While W.F. Biggins was in existence, did you work full time at the Hazen Paper Company? A. Yes, I did.

Q. And who primarily did the work for Proclamation? A. My son Timothy.

Q. Who did the work for W.F. Biggins Associates?

A. My son Timothy.

Q. Did you make any money from Proclamation, Incorporated? A. No.

Q. Did you make any money, had you in June of 1986 made any money from W.F. Biggins Associates? A. No.

Q. Had W.F. Biggins Associates at that [120] time made any money itself? A. They had — Tim had sold two accounts, yes.

Q. Now, getting back to the agreement here, did the agreement — was it your understanding that the agreement had any other provision as to what your options were if you left Hazen Paper Company? A. They — I had no possibility of working in a paper converter for two years.

Q. Now, what was your understanding as to what this agreement provided as to that? A. I don't understand.

Q. Well, did the agreement have a restriction on what you could do after you left the Hazen Paper Company, if you left the Hazen Paper Company? A. Yes.

Q. What was that? A. That I couldn't work for anybody that could be considered a competitor of Hazen Paper for a period of two years.

Q. Now, how old were you at this point in time? A. Sixty-two years old.

[121] Q. And was it in your own mind, did the provision have any significance to you? A. Yes, I realized that the market was very limited to somebody in their sixties. And that I was really signing away a lot of rights.

Q. Now, at that point in time, you were the — were you the head of the Technical Department at the Hazen Paper Company? A. Yes.

Q. How many people were in that department? A. There were three people that worked for me.

Q. And who were those individuals? A. I had a gentleman who was a color matcher. He prepared samples for submission to customers that sent in a piece of string or a button or something like that.

Q. What was his name? A. Peter Cleuh.

Q. And who else? A. There was a young lady who was a microbiologist from the University of Massachusetts, who was very experienced in computers. And she ran the color computer we had purchased two or three years previously.

[122] And then there was a fourth man who was — did incoming quality control, Al Sufoletti.

Q. Now, these individuals who also worked in the Technical Department, did they have access to the same information that you had access to in terms of Hazen's processes? A. Yes, they did.

Q. How old was Mr. Cleuh? A. He was high thirties.

Q. How old was Miss Manning? A. Low thirties.

Q. And how old was Mr. Sufoletti? A. About the same age.

Q. To your knowledge, as a member of the Executive Committee at Hazen and as the head of that department, did any of those individuals have restrictive agreements? A. They did not.

Q. Did any of those individuals have agreements similar to Exhibit 10A that you have right now? A. No, they did not.

Q. At that point in time, were any of those individuals being asked by Tom Hazen to sign any such agreement? [123] A. No, they were not.

Q. Now, after you had received the agreement and after you had contacted Attorney Goldman, what happened next with respect to this matter? A. I returned it to Thomas Hazen on the 9th as instructed with a copy of Attorney Goldman's letter.

Q. And did you have a meeting with Tom Hazen at that point in time? A. The following morning, we had a meeting.

Q. And what happened at that meeting? A. At this meeting, Mr. Hazen told me to sign the agreement.

I said that I wanted a companion agreement specifying salary, stock, so forth. And he said no. That was the only agreement that was going to last. That was going to stand.

And then I had essentially signed it unchanged.

Q. Now, this agreement that I have been proposing to you as Exhibit 10A, did it have any provision relating to compensation? A. I don't think so. No, it did not. No.

Q. Did it have any provision relating to [124] the stock promise that had been made? A. No, it did not.

Q. And you informed Mr. Hazen of that at this meeting? A. Yes, I did.

Q. And what was his response? A. He said he wouldn't consider anything about this agreement at that time.

Q. And if there was no agreement on the agreement, did he indicate what the result would be? A. He said that we would have to sever our relationship.

Q. Now, with respect to the severing of relationships, was there any discussion about your performance at Hazen?

A. Yes, there was.

I asked him if I had been a good employee. He told me I was loyal, and that I had given a hundred percent of my effort.

Q. Now, did you indicate at this meeting whether or not you would sign this agreement? A. I said I would be willing to

sign the agreement if the accompanying agreement was furnished. I had no problem signing it.

Q. The accompanying agreement being what?

[125] A. The definition of salary and stock plans.

Q. And at that time, did Mr. Hazen deny to you that he had ever promised you stock? A. No, he didn't.

Q. Now, how were things left at the end of that meeting?

A. He told me to call Attorney Fred Sullivan, who was a company labor law lawyer, and work out a severance agreement with him.

Q. Did you call Mr. Sullivan? A. I placed a call to Mr. Sullivan that day. I finally talked to him on Thursday of that week. Two days later.

Q. And what transpired in that conversation that you had with Mr. Sullivan? A. He informed me that it wasn't up to him to make the severance relations. It was up to the Hazen Paper Company. And we discussed, I guess, the agreement.

Q. Now, at this point in time, what was your understanding of your employment situation? A. At Hazen's?

Q. Yes. A. That I was on the payroll, but it was in [126] jeopardy.

Q. Did you then talk to Tom Hazen again? A. The following morning I received an unusual telephone call from Tom Hazen, offering me a job as a consultant with the company.

Q. Now, what was your understanding of what your status would be as a consultant? A. I didn't investigate the telephone call because I was coming into the office within a few minutes, and we could do it in person. I was very perplexed, though, why he was offering me a job as a consultant.

Q. Did you indicate to Mr. Hazen that you wanted to talk to him about the situation? A. Yes.

Q. And did you later? A. Yes, I was called in his office about 9:30 on that 13th of June.

Q. What happened at that time? A. He told me to sign the agreement, or I would be fired.

I told him I would be willing to sign it, but I had to have the financial agreement as well.

He said that there would be no changes [127] to the agreement whatsoever; it stood; to sign it.

Q. What did you say? A. I said I couldn't sign it without the agreement.

He told me to leave the building, get out, and come back after five o'clock and clean out my desk.

I said, "Are you firing me?"

He said, "I am not firing you. I don't know what I'm doing to you, but I'm not firing you."

Q. At that point in time, what was your understanding of the situation? A. No doubt in my mind, I was fired.

Q. Now, and did you ever return to Hazen Paper Company?

A. I returned at five o'clock, cleaned out my desk, locked the door, as I was the last one in the office, and left.

Q. Now, you had mentioned that Thomas Hazen had offered you a consulting arrangement. A. Yes.

Q. Was it your understanding that you would still be an employee if you did that? A. No.

Q. And at that point in time, this was [128] when, Mr. Biggins? A. On the 13th.

Q. Of? A. June, 1986.

Q. How long had you been with the Hazen Paper Company? A. Almost ten years. Nine and a half years almost.

Q. And did Hazen Paper Company have a pension plan?

A. Yes, they did.

Q. And what kind of plan or plans did they have? A. They had two plans. One was a retirement plan which the company donated to. The other one was stock, employee stock plan where they issued stock in the company to the employees.

Q. What was your status with respect to the retirement plan in June of 1986? What was your understanding? A. My understanding was that I was just a few hours away from being fully vested in both plans.

Q. And with respect to the retirement plan, do you know approximately how much money was [129] in that with respect to your account? A. Somewhere between sixty and \$70,000.

Q. And with respect to the other plan you mentioned, the employee's stock ownership plan, what was your status with respect to that in June of 1986? A. June of 1986, I thought I was hours away from fully vesting, but I was actually only ninety percent vested.

Q. How much money did you have in that? A. I think the figure I was at was about \$23,000.

Q. With respect to the retirement plan, as a result of your being fired in June of 1986, did you ever receive any benefits from that retirement plan? A. No.

Q. Do you have any right to receive any benefits from this retirement plan? A. No.

Q. At the time that you were fired?

THE COURT: Let me ask you a question, please. Sorry to interrupt.

When you said you had \$90,000 or sixty or \$70,000, I guess you said in the pension plan, [130] was that your money that had been taken out over the years?

THE WITNESS: No, it wasn't, your Honor.

THE COURT: None of that?

THE WITNESS: None.

THE COURT: How about the \$23,000 in the stock plan?

THE WITNESS: I don't think so, your Honor. No.

THE COURT: Everything had been put aside by the employer?

THE WITNESS: Yes.

Q. (By Mr. Cahillane) Now, on that day when you were fired, Mr. Biggins, were you paid your final pay? A. I was not.

Q. Did you ever receive your final pay? A. Yes, I did, in early July.

Q. And how did that come about? A. Attorney Goldman had written to Hazen Paper Company, requesting my final pay and my vacation pay for 1985 and 1986.

MR. CAHILLANE: And may I approach the bench, your Honor?

[131] THE COURT: Yes.

(Bench conference held.)

MR. CAHILLANE: Your Honor, I was going to at this time introduce a couple of letters.

One is from Attorney Fred Sullivan to Dana Goldman.

The other is from Mr. Goldman to Fred Sullivan on this subject of the pay, just as documentation as to what occurred.

I gather that there is going to be an objection in light of what happened before.

The major reason I wanted to put these in now was really economy.

THE COURT: Unless you stipulate to the pay that he did get or didn't get.

MR. MCGINLEY: Sure. We have given them access to the paychecks. We gave them all of this.

MR. CAHILLANE: Not the matter of information, it's a question of the fact that he didn't get any vacation. They had to fight for it.

And another angle on the vacation pay is its significance legally here in terms of the contract claim.

THE COURT: Simply ask him whether [132] he had his vacation pay or he had to fight for it and what were the circumstances. Put that in evidence.

MR. CAHILLANE: Thank you.

(End of bench conference.)

Q. (By Mr. Cahillane) Now, Mr. Biggins, you had indicated that you ultimately got your pay through Attorney Goldman?

A. Yes.

Q. Do you know how that came about? A. I believe the Hazens sent it to Mr. Sullivan, who sent it to Mr. Goldman.

Q. Speak up, please. A. I believe that the Hazen Paper Company sent it to Attorney Sullivan, to their lawyer, who in turn sent it to Attorney Goldman.

Q. Now, and that was sometime in July? A. Yes.

Q. And you had been terminated when? A. The 13th of June.

Q. Now, did you also in June of 1986, did you have any vacation time coming to you from Hazen Paper Company? A. I had vacation for 1985. I was entitled to three weeks. I had used three days. [133] And after the 1st of June I was entitled to my vacation for 1986.

Q. And when was the last time that you had used any vacation? A. I think I used a vacation day, a day of it in early 1986. A couple of days.

THE COURT: You sound like a certain Judge I know.

At the time you received your last paycheck, did you receive any severance pay in addition?

THE WITNESS: No, your Honor. I received 13/30th's of my last month's pay.

Q. (By Mr. Cahillane) With respect to the vacation, had you tried to take any vacation in 1986? A. Yes, I requested some time off in May, and was refused by Mr. Thomas Hazen.

Q. Now, did you receive when you were terminated or thereafter any vacation pay? A. None whatsoever.

Q. And what was your understanding as to why you did not receive that? A. Hazen had a policy that you were not entitled to vacation. Vacation was time off without [134] pay.

Q. And how did you learn of that policy? A. It was in the company handbook that had been given to me.

Q. Did you learn, did you hear anything about this policy at the time you were terminated or shortly thereafter? A. I believe it was in the letter, the letter accompanying my check from Mr. Sullivan to Mr. Goldman.

Q. You are saying Mr. Sullivan made reference to the company policy? A. Yes, he almost quoted it verbatim.

Q. I believe it was policy contained in a company handbook? A. Yes, it was.

Q. I'm going to show you a document, Mr. Biggins, and ask you if you can identify this. A. Yes, that is the employee handbook, Hazen employee handbook.

Q. And what is it you're holding in your hand; was this something that you had at Hazen? A. It was given to me at Hazen, yes.

MR. CAHILLANE: Your Honor, I would like to offer the original into evidence.

[135] THE COURT: All right.

MR. MCGINLEY: No objection.

THE COURT: 11 in evidence.

(Plaintiff's Exhibit 11 *marked in evidence.*)

Q. (By Mr. Cahillane) Now, you mentioned with respect to this policy, Mr. Biggins, that this was something that Mr. Sullivan had made reference to? A. Yes.

Q. And I'm going to show you a copy of another document, and I ask you if you can identify this? A. This is a letter dated June 23rd from Attorney Frederick L. Sullivan to Attorney Dana M. Goldman, Esquire.

Q. And in that, is it in this letter that Attorney Sullivan makes reference to this policy? A. Yes.

Q. And where is that? A. It's in the fourth paragraph.

Q. And what does that say?

MR. MCGINLEY: Objection.

THE COURT: Well, I'm going to allow the letter in evidence, because it comes from [136] the Defendant's attorney. And therefore, the attorney is speaking for the Defendant. I will allow that.

Go ahead. You may read it.

THE WITNESS: Vacation policy at the Hazen Paper Company clearly states that vacation is quotation marks, not earned, closed quotation marks. It is paid non-work time, payable at the time when the employee is off duty for that purpose. This is not accrued or vested by an employee.

MR. CAHILLANE: And I would like to offer that into evidence, your Honor.

THE COURT: That may go in as Exhibit 11 — I'm sorry, 12.

(Plaintiff's Exhibit 12 *marked in evidence.*)

MR. CAHILLANE: Your Honor, I would also at this time like to make use of the overhead again.

THE COURT: Very well.

Q. (By Mr. Cahillane) Now, that provision that Mr. Sullivan cited there, was that a provision that was contained in the employee handbook? A. Yes, it is.

[137] Q. And do you know where it was contained? A. On Page 8.

Q. Could you, Mr. Biggins, tell the jury what that provision provides? A. It says: Vacation is not earned.

THE COURT: Are you going to use this?

MR. CAHILLANE: For something right after this.

THE COURT: Go ahead.

THE WITNESS: Vacation is not earned, rather it is paid non-work time, during which period the employee is given time off with pay. To be able to meet our customer requirements, immediately before and after a vacation period, attendance on the day before and the day after vacation is required.

Q. (By Mr. Cahillane) Essentially the same provision that Mr. Sullivan had cited in this letter applies to you? A. Yes.

Q. Now, are you aware of whether or not the employee handbook also discussed criteria for an employee being fired?

A. Yes, it does.

[138] Q. Do you know where that is?

If it's helpful, if I could draw your attention to Pages 2 and 3. A. Oh, yes.

MR. CAHILLANE: And, your Honor, this is where I would like to use the overhead.

This is a copy of what is on there.

Q. (By Mr. Cahillane) And directing your attention, Mr. Biggins, to the last paragraph of the section entitled: Job Security, would you read what that says? A. When employees did not fulfill the company standards, they are [sic] counseled and told how to be an acceptable employee. Only those who jeopardize customer relations through outlandish gross violations of standards or failure to respond to repeated counseling are separ-

rated. In short, all we ask is that you do your job. That will keep the business coming in, and will keep you employed. During slow periods, the company has traditionally given everyone a minimum of forty hours.

Q. Now, up to the point in time when you were fired on June 13th, 1986, had Thomas Hazen or Robert Hazen indicated to you that you had done [139] anything to jeopardize customer relations? A. No.

Q. Had they engaged in any counseling with you? A. No, they did not.

Q. Had they indicated to you that you were not doing your job? A. No.

Q. Did they in those meetings that you had, have any comments on your job? A. To the contrary. They said that I was performing admirably.

Q. Thank you.

At this point in time, Mr. Biggins, what were your own intentions in terms of retirement and how long you intended to work? A. I was going to emulate my father, who is ninety-four years old now, and he worked until he was eighty-two. I intended to work as long as I could.

Q. Now, if I could just clarify a few matters regarding these outside businesses that Thomas Hazen was objecting to in his discussions with you.

Proclamation, Inc. was formed when? [140] A. In 1983.

Q. And how long was it in existence? A. A little over a year.

Q. Were you the one who formed that company? A. Yes.

Q. Why did you do that? A. To help my son.

Q. Why were you doing that to help your son? A. Tim had left the University of Mass. before getting his degree. And I thought it would be an excellent opportunity to give him a break in life. And I realized that it could be a very lucrative business.

Q. What was the business that Proclamation was in?

A. In the business of recovering dirty solvents from printing companies, automobile shops.

Solvents are a very common material used, and it gets dirty and the process has to be cleaned up, and traditionally, the

solvent was sent over the road and there are hazardous waste regulations, and the true solution, and it's coming true today, is for the generator to render his [141] hazardous materials non-hazardous, at his place of business.

Q. And this is what Proclamation was going to do?

A. This was going to clean up the equipment on the truck, and visit various places and clean up their dirty solvents on the premises.

Q. Was Hazen Paper Company commercially involved in such a business themselves? A. No, they weren't.

Q. Had you done something similar for Hazen Paper Company? A. Yes, I had constructed a still in Hazen's plant to recover their waste solvent and waste inks.

Q. And now, was Proclamation using a still or something of the same design? A. No.

Q. When you told Thomas Hazen about Proclamation, did he object to you doing this, your involvement in it? A. No. He told me he wanted ten percent of the take, though.

Q. And did he tell you anything about that after that? [142] A. The following day he came in and apologized. He said he had no claim to that whatsoever.

Q. Did he indicate to you in any way that that was a business that Hazen might want to get involved in? A. No. I discussed when I built his still, it was a very successful still. We had the only permit I think in America to take the residue from his still and put it into a municipal dump. Everyone else had to put it in a hazardous waste dump, and we had permission from the Massachusetts environmental people to put it in conventional dumps.

Q. Did Proclamation do any work for Sullivan Paper Company? A. Yes.

Q. Was it your understanding that Sullivan Paper Company was a competitor of Hazen Paper Company? A. Yes.

Q. To what extent? A. Sullivan Paper makes gift wrap for the consumer. They make small rolls that you buy at Christmas-time to wrap your Christmas gifts.

[143] They also make a line of coated paper that competes somewhat with Hazen Paper.

Q. Well, how much business did Sullivan Paper compete with Hazen Paper Company out of? A. Very little.

Q. How much business did Proclamation do with Sullivan Paper Company? A. I prevailed on Mr. Roger Sullivan to let me try the equipment at his plant.

We did three drums of dirty solvent and was satisfied that his waste stream was beyond our capability with the equipment.

Q. How much are we talking about in terms of dollars?

A. Four, \$500.

Q. And who did that work? A. My son Timothy.

Q. Now, with respect to Holyoke Card and Paper, did Proclamation do some work for that company? A. Yes.

Q. Was it your understanding that Holyoke Card and Paper was a competitor of Hazen? A. No.

Q. How much work did Proclamation do for [144] Holyoke Card and Paper? A. There is a story behind that.

We did — we kept the truck at their facility for, oh, approximately a year.

Q. How much income did Proclamation realize out of that?

A. A couple of thousand dollars.

Q. How much did you realize from Proclamation?

A. None.

Q. And Proclamation, Inc., I take it folded at some point?

A. Yes, it did.

Q. When was that? A. It was in 1984.

Q. 1984? A. Yes.

Q. Almost or approximately two years before your June 1986 termination? A. Yes.

Q. Now, with respect to the other company, W.F. Biggins, Incorporated, why was that started? A. Once again, I recognized that as Technical Direct[or] of Hazen Paper Company, when these laws came along, you had to get material safety data [145] sheets for all the chemicals you use, and you had to pre-

pare a written manual. You had to train your employees. You had to update the manual.

And when I did that, I was taking valuable time away from my abilities to develop product, and watch the technical aspects of the company. And I realized that there was going to be a place for someone who would offer this kind of services to small to medium-sized companies. Large companies can afford to put somebody on staff full time and concentrate on it. But small to medium-sized companies can't.

I recognized that as an excellent opportunity, and at that time there was one regulation that was required, and I suggested to my son Timothy that he get involved in that.

Q. Was this a business or a service that the Hazen Paper Company was involved in, providing commercially? A. No.

Q. Have they been as far as you know? A. No.

Q. Now, prior to your June 1986 termination, was Thomas Hazen aware of the existence of W.F. Biggins, Inc.? [146]

A. Yes, he was. I told him about it.

Q. And had he given you any objections about it as this time? A. No, he applauded my intention to help my son.

Q. And at some time in May of 1986, prior to your first discussion about the agreement and your termination, did something happen with Mr. Hazen with respect to W.F. Biggins, Inc.? A. Yes. Timothy had been invited to speak to the Association of Decorated Papermakers, part of a bigger association of the Pulp and Paper Institute, American Pulp and Paper Institute.

He had been invited to speak by Mr. Eric Fuller, President of Holyoke Card and Paper, who Timothy knew very well.

Timothy had been talking about the new venture with Eric, and Eric thought it would be a wonderful opportunity for Tim, and I served the Association very well, because the business world didn't realize fully what the full impact of the law was.

So he had invited Timothy to speak to this meeting.

I told Tom Hazen about it so he would [147] know before he went in there that Timothy was going to be speaking.

Two days later, I received a note on my desk that on consideration, he thought it would be better if Timothy didn't speak to the Association, and he had personally cancelled Timothy's appearance with Mr. Fuller.

Q. Now, he knew Timothy was your son? A. Correct.

Q. Did Timothy work for Hazen Paper Company?

A. No.

Q. Other than being your son, did he have any relationship with Hazen Paper Company at all? A. No.

Q. You say Mr. Thomas Hazen took it upon himself to call Mr. Fuller and cancel this arrangement? A. Yes.

Q. I'm going to show you a copy of a document and ask you if you can identify this? A. That's the document he laid on my desk.

Q. This is a note from? A. Thomas Hazen to me.

MR. CAHILLANE: I would like to [148] offer this, your Honor.

MR. McGINLEY: No objection.

THE COURT: All right. 13 in evidence.

(Plaintiff's Exhibit 13 *marked in evidence.*)

THE WITNESS: It says: Walter, I have second thoughts about Tim speaking to API meeting. I have asked Eric Fuller to make other arrangements for Tuesday.

Q. (By Mr. Cahillane) Now, on the 14th of May, at the time that note was written, did Tom Hazen call you in to talk about this at all? A. That was on my desk. That's all I knew about it.

Q. Were you at that time or had you at this time made any money from W.F. Biggins Associates? A. No.

Q. Had you on behalf of W.F. Biggins & Associates, Inc. solicited any business from any competitor of Hazen?

A. Timothy did this exclusively.

Q. Now, the title of the company, W.F. Biggins, is your name?

* * *

[151] Q. And starting with Tom, if you can, when did that occur? A. He reminded me one time after he had given the Executive Committee some life insurance that it was costing him a lot more for my policy because I was so old.

Q. And did you also say that Robert also made a comment once? A. Yes. Around '85 or so, he had taken out membership in a handball court in Holyoke — in Chicopee, for the employees. And he told Malcolm Gesner and I it wouldn't do us much good because we were so old.

Q. [Who] is Malcolm Gesner? A. Malcolm Gesner was Vice President of Manufacturing. He was a year older than I. He's dead now.

Q. Now, who was it that replaced you in your job as Technical Director? A. A gentleman named Timothy McDonald.

Q. And do you know Mr. McDonald; have you met him?

A. Yes, I have.

Q. And do you know approximately how old Mr. McDonald is?

* * *

[155] Q. And how has that gone in terms of business?

A. There has been a lot of work, seventy, eighty hours a week, five days, anyway, sometimes six.

It's — I think it's starting to gel.

Q. And can you tell us from these W-2 statements what amount of income you have made since you were fired from Hazen Paper Company? A. In 1987, the total figure was \$26,100.00

In 1989 it was \$26,000.00

In 1988, \$31,425.00.

Q. And Mr. Biggins, with respect to the coating you have developed that we talked about originally, that we had the chart with respect to, do you know if that's still in use at Hazen Paper Company? A. To the best of my knowledge it is.

MR. CAHILLANE: That's all I have, your Honor.
 THE COURT: All right. Cross examination?
 MR. MCGINLEY: May we approach for a moment?

. . .

[July 17, 1990, Volume II, p 50] Q. Now, is it fair to say that you were satisfied with your salary at the Hazen Company up until the year 1983?

A. Yes, sir.

Q. Was it in 1983 then that you compared your situation, as I think you told the jury yesterday, to Bob Hutchinson?

A. About that time, sir; yes.

Q. You told that to Tom Hazen? A. Yes, sir.

Q. Basically, that Hutchinson was being paid a lot of money compared to what you were being paid? A. Yes, sir.

Q. Was there any discussion with Tom at the time about the expenses that Hutchinson would have to take away from the gross amount of money that he was receiving? A. He mentioned that, sir; yes, sir.

Q. Tom Hazen had? A. Yes.

Q. Was it your understanding at the time you first talked to Tom about it that Hutchinson was making a particular amount of money? A. Yes, sir.

. . .

[54] . . . the small amount of the increase that they granted me, after my luncheon with he and Bob earlier in the summer.

And I told him that I knew what Mr. Hutchinson was making selling my product, and that it was substantially greater than what I was earning.

And eventually got to the point — whether I offered it or he asked, that I thought my salary should be at least a hundred thousand dollars.

Q. How much were you making at this point, or what point in time are we talking about again? A. In July, I believe.

Q. Of 1980? A. 1984.

Q. How much were you making then? A. My salary for 1984 I believe was \$44,000, after the increase that was granted me in June, if I recall, sir.

Q. You also got a bonus every year from the Hazen Company, didn't you? A. Everybody did, sir. Everybody did.

Q. You're not counting bonus as part of your total compensation? A. No, I was making the distinction, sir, that with bonus and salary, I was making less than . . .

. . .

[56] . . . something dollars? A. Yes, sir.

Q. And after you told Tom that you felt you were comparatively underpaid to Hutchinson, what did he say? A. I remember the direct quote, "I hear you".

Q. Was that the extent of the conversation? A. No, sir. No.

Q. Please tell us the rest of it. A. When he said that, I assumed and I think correctly, that he acknowledged that my position was a fair one.

Q. Did he say that to you? A. I assumed from that statement, sir, that that's what he meant. Maybe I was wrong.

He then said to me that he couldn't pay me what I asked for in money, but he said he could give me the difference in stock in the company, and thereby make me — give me part of the business.

Q. Now, the difference in stock was the difference between what, your salary and Hutchinson's salary? A. No. My salary and the hundred thousand dollars I was asking for.

[57] Q. And was your understanding with — withdrawn.

Did Tom Hazen tell you he would give you cash to make up that difference? A. No, sir. He promised me stock in Hazen Paper Company to make up the difference.

Q. How did you arrive at the number one hundred thousand? A. It was — it wasn't a strict calculation. It was just an approximation.

Q. It wasn't a mathematical computation or anything?

A. No, sir.

Q. Now, at this meeting you had with Tom, where was it again? A. Kelly's Lobster House.

Q. Was anyone else present? A. In the restaurant?

Q. No. I'm sorry. A. Just the two of us.

Q. Did you make any memo of that conversation? A. No, I didn't, sir.

Q. Did you know how the stock was valued at the time at Hazen? [58] A. I hadn't the faintest idea.

Q. Did you know how many shares of stock you would have to receive to bring your compensation up to a hundred thousand? A. No, sir.

Q. Is it fair to say you didn't get into any specifics of — about the amount or evaluation of the stock at that meeting at Kelly's? A. That's right, sir.

Q. Did Tom tell you anything at this meeting about having to check with lawyers and accountants or anything of that nature? A. He said that was the next step, sir, yes.

Q. Did he say why he had to check with attorneys and accountants? A. No, sir.

Q. Was there any time limit put on when Tom was to get back to you? A. No, sir, there wasn't.

Q. Did he tell you at that meeting that he couldn't give you stock because then that would give you a vote in the privately held company, and he didn't want to do that? A. Not at that meeting, sir.

Q. Did he tell you that at some later time? [59] A. Yes, sir.

Q. When? A. On our trip back from Boston, sir.

Q. Again, in point of time, when would that have been?

A. In the Summer of 1950 — excuse me — 1985.

[Q.] That was December of 1985? A. No, I think it was summertime, sir.

Q. And where did you speak to him at that time? A. In his automobile, sir. He was driving up the Mass. Pike.

Q. Just the two of you again? A. Yes, sir.

Q. What was the conversation that time? A. I reminded him and asked him about the — how it was proceeding.

Q. What did he say? A. He said he was — like the statement about giving me a vote in the company, he didn't want to do that, and he was trying to get around it.

Q. So is it fair to say he turned down your request for stock during that conversation? A. No, sir. He just told me he was trying [60] to fulfill his promise to me for the stock.

Q. He indicated, though, that he was having some difficulty doing that? A. He had a problem, he said.

Q. Did you ask him about that again? A. No, I didn't. Not directly. No, sir.

Q. And you went and did you[r] work every day at that time at the Hazen Company? A. Yes, sir.

Q. Did you go up to Tom or Bob at any time up until this car ride back and demand money from them because you had produced a new water-based lacquer or coating? A. No, sir.

Q. Why not? A. I trusted them implicitly. I thought they were men of their word.

Q. You didn't use the water-based coating as the reason for why you should be given that raise, did you? A. I used that and everything else that I had accomplished for the company as a basis for it, sir.

Q. Nothing more, do I understand, was said about the stock promise as you say again until May [61] of 1986? A. No, sir. There was one other instance.

Q. When? A. December of 1985, sir.

Q. What happened at that time? A. That's when Tom Hazen called me into his office on a Saturday morning and congratulated me on my accomplishment for laminating film on this equipment.

He told me it had opened up a vast new multi-million-dollar market for the company.

I said thank you much for the compliment, where's my stock? I'm getting impatient. You promised me that in 1984, and I still haven't seen it. Don't give me congratulations, give me part of the company.

Q. What did he say? A. He said, "Oh, I got to take that down and dust it off."

Q. Did you believe that he had already concluded that he had told you that stock was not an option for you? A. No, sir. He kept the door open with a statement like that, didn't he?

Q. You think he just forgot? [62] A. No, sir. In retrospect? I don't think so.

Q. Then the next time you had a meeting or discussion about the increase about stock was on May 24th? A. Yes, sir.

Q. And that was the meeting where among other things, Tom and Bob expressed outrage, I think you used the word, about you[r] private businesses? A. Yes, sir.

Q. Now, let's talk for a minute about your private businesses.

I show you a brochure purporting to be W.F. Biggins Associates, Inc. brochure.

Did you prepare that brochure? A. My son and I prepared it together, sir.

Q. And that is the brochure advertising the existence and the capabilities of a company known as W.F. Biggins, Inc.?

A. Yes, sir.

MR. MCGINLEY: I offer that in evidence, your Honor, please.

THE COURT: All right. F in evidence.

MR. CAHILLANE: No objection.

* * *

[64] A. Yes, sir.

MR. MCGINLEY: I offer that in evidence, your Honor.

MR. CAHILLANE: Your Honor, I object. I think that we have some confusion about dates here.

This document is dated March 16th, 1988. Certainly not the time period you're asking him about now.

MR. MCGINLEY: I never asked when that was prepared. It speaks to this particular business.

THE COURT: May be allowed in evidence. G in evidence. (Defendant's Exhibit G marked in evidence.)

Q. (By Mr. McGinley) Mr. Biggins, excuse me.

At the bottom of the form there is a place for President, Directors and Officers? A. Yes, sir.

Q. Your name is prominently displayed at the bottom; is it not? A. Yes, sir.

Q. Is Timothy Biggins anywhere on this? [65] A. No, sir.

Q. Was he an Officer or Director of the company at the time? A. I suppose he was a Vice President.

Q. Why do you only suppose? A. Well, we were very informal. We were trying to make a living, we weren't worrying about organization.

Q. But his name is not on the Dun & Bradstreet report, is it? A. No, sir.

Q. Not as Vice President? A. No, sir.

Q. Not at all? A. Not at all.

Q. What was W.F. Biggins, Inc. set up to do? A. Initially, to help small and medium-sized companies comply with the Right-to-Know law.

Q. And what is the Right-to-Know law? A. It's a Federal and State law, two laws, that require that anybody having products in their work environment to which people are exposed, come in contact with in the course of work, containing more than one percent of a hazardous chemical, which [66] appear on lists for Massachusetts, two thousand chemicals, and for the Federal Government it's over sixty thousand chemicals, or any chemical that is a carcinogen that causes cancer present in more than a tenth of a percent in any product, it has to be on a material safety data sheet collected from the supplier.

The employees have to be told that it's present in the product and in the workplace, and they have to be told what a

material safety data sheet is; how to read it; how to protect themselves; how to recognize symptoms if they are exposed to it, and medical or first aid in case there is a problem.

Q. Did the Hazen Company require this Right-to-Know service? A. No, the Federal Government did, sir.

Q. I said did the Hazen Company require that Right-to-Know information be given to them — I'll rephrase it.

Did the Hazen Company require the services of someone who would tell them how to comply with the governmental Right-to-Know law? A. No, sir.

Q. So that there was no Right-to-Know officer at the Hazen Company? [67] A. Formally, no, sir. It was my responsibility, but I wasn't a formal officer.

Q. Were you in charge of the Right-to-Know part of it?

A. Yes.

Q. Of the Hazen Company? A. Yes, sir. Yes.

Q. So that you gave to the Hazen Company the knowledge that you have just imparted to the Judge and to the jury here now? A. Yes, sir.

Q. And when did you do that? A. I don't know when it was, sir.

Q. Was it before you formed the W.F. Biggins, Incorporated Company? A. Yes, sir.

Q. For how long were you the Right-to-Know officer at Hazen, approximately? A. I don't recall when it became a law. I honestly don't know.

Q. Now, had you ever done Right-to-Know work prior to doing this work at Hazen? A. Nobody had at that — prior to that time?

Q. Did you become proficient in the Right-to-Know area? [68] A. I read the regulations.

Q. Did you speak to any lawyers who were active in the field about it? A. No, sir.

Q. Did you ever, for example, meet with Fred Sullivan to discuss Right-to-Know? A. No, sir.

Q. Did he ever give you any pamphlet or papers on that subject? A. Not that I recall, sir.

Q. Did he ever meet you to discuss it with you? A. Not that I recall, sir.

Q. So you developed your expertise from reading books and treatises on this subject? A. My expertise is my background as a chemist, sir.

The application of the law I got from reading the regulations.

Q. That is, you had to learn the law in order to apply your chemical background to it? A. So I had to read the law, so I could see how to satisfy it, sir, yes.

Q. Now, you were going to do the same kind of work you did for the Hazen Company in this new [69] company of yours, W.F. Biggins, Inc.? A. No, Timothy was.

Q. You set up the company; did you not? A. Yeah, but Timothy was going to do the work, sir.

Q. And the brochure said W.F. Biggins, Associates, Inc.; doesn't it? A. Yes, it does.

Q. So when the company was set up, the work that was going to be done for it was the same kind of work that you had done for the Hazen Company? A. Yes, sir.

Q. Now, did you seek any business for your new company, W.F. Biggins, Inc., from any Hazen competitor? A. Me?

Q. Yes. A. No, sir.

Q. Did you approach anybody? A. No, sir.

Q. About this company? A. No, sir.

Q. Did your son Timothy approach anybody? A. Yes, sir.

Q. Do you know who? [70] A. I know some of them. I don't know the whole number that he did, sir.

Q. He did that on his own? A. Yes, sir.

Q. You had no part in it at all? A. No, sir.

Q. You didn't make an introductory phone call for him or anything of that nature? A. No, sir. It was on his own completely.

Q. Are you aware of whom he approached as you sit there now? A. Some of them.

Q. Who were they? A. Well, he started off by looking to the list of manufacturers, a thick book of manufacturers in Massachusetts, and writing them letters.

Q. Forgive me. I didn't want the whole general list.

Of Hazen competitors, do you know if he approached any of those? A. Yes.

Q. Who? A. Hampden Card & Paper. Holyoke Card & Paper.

Q. Holyoke Card was a competitor of Hazen? [71] A. No, sir.

Q. Didn't you just say they were? A. Pardon me, sir. I should clarify it. They are in the same business.

Q. They are in the same business, but they are not a competitor? A. They are a gravure printer. Yes, sir.

Q. Who else did Timothy approach? A. He approached Sullivan Paper.

Q. Is that a competitor of the Hazen Paper Company?

A. Yes, sir.

Q. Did he approach anybody else? A. I don't recall any others, sir.

Q. Who at Sullivan did Timothy approach? A. I don't know, sir.

Q. Did you approach Holyoke Card & Paper in the Spring of 1986? A. No, sir.

Q. Did you approach Eric Fuller particularly in the Spring of '86 and offer him the services of W.F. Biggins? A. I did not, sir.

Q. Did W.F. Biggins do work in this area, Right-to-Know, for Holyoke Card & Paper in the Spring [72] of 1986?

A. No, sir.

Q. I want to show you two documents, Mr. Biggins.

One is a three-page document, top one is dated September 19th, 1986, purporting to be a letter from you.

And the other seven, invoices purporting to be from Proclamation, Inc.

MR. CAHILLANE: May I have a minute to look through these before the next question?

THE COURT: All right. Go ahead.

(Short pause.)

Q. (By Mr. McGinley) Mr. Biggins, please look at the document I gave you dated September 19th, 1986, apparently signed by you at the bottom. A. Yes, sir.

Q. Is that your signature? A. Yes, sir.

Q. And is that a letter that you wrote to Holyoke Card & Paper in 19 — September 1986? A. Yes, sir.

Q. And does it relate to an invoice that you gave to Holyoke Card for services on May 12th, [73] 1986? A. It relates to an invoice sent to Holyoke Card on May 12th, 1986.

Q. And there is also a check, is there not, from Holyoke Card & Paper to the order of W.F. Biggins, Inc., on May 12th, 1986, in the amount of \$1,600? A. Yes, sir.

MR. MCGINLEY: I offer that in evidence, your Honor.

THE COURT: All right. Exhibit H.

(Defendant's Exhibit H marked in evidence.)

Q. (By Mr. McGinley) Let's go to the invoices I gave you starting in February 1984, March '84, April '84, June '84, July '84, September '84, and December '84.

Are these invoices, those from you — strike you — from Proclamation, Inc. to the Holyoke Card & Paper Company?

A. Yes, sir.

Q. Did you send those bills out? A. Proclamation did, yes, sir.

MR. MCGINLEY: I offer that in evidence, your Honor, as the next Defendant's [74] exhibit.

THE COURT: All right. I in evidence.

(Defendant's Exhibit I marked in evidence.)

Q. (By Mr. McGinley) I want to go back to the question I just asked you before I showed you these things.

Did you do any work for Holyoke Card & Paper in the Spring of 1986? A. On which company, sir?

Q. W.F. Biggins. A. No, sir.

Q. Let me refer you then to the document you have in front of you, which indicates that on May 12th, 1986, which would be the Spring of 1986, a bill for \$1,600 and a program was presented to Holyoke Card & Paper for which you, or W.F. Biggins, Associates, Inc., received a check for \$1,600. Isn't that true? A. This was a down payment. That was when Tim signed them up.

Q. Was there any work done at the beginning? A. No, sir.

Q. They were signed up you say as a client [75] in May?

A. Tim signed them up as a client in May.

Q. Did you have anything to do with that? A. No, sir.

Q. Now, with respect to Proclamation — A. Yes, sir.

Q. — there are several bills that I've just listed for you.

A. Yes, sir.

Q. From February '84 through December of '84? A. Yes, sir.

Q. Was that work done for Holyoke Card & Paper?

A. Yes, it was, sir.

Q. Were you — what kind of work was the Proclamation Company doing for Holyoke Card & Paper during that period of time? A. They were recovering clean solvent from waste ink and from wash-up materials, sir.

Q. And had you done that same kind of work at the Hazen Company previously? A. Yes, sir.

Q. And in fact, you set up, or Proclamation, Incorporated was set up, you set it [76] up, didn't you? A. With Timothy, yes, sir.

Q. When did you set up Proclamation, Incorporated?

A. It was in 1983 sometime, sir.

Q. And Proclamation, Incorporated was going to do the same type of work that you just indicated that you did for the Hazen Company? A. Yes, sir.

Q. And you did that same kind of work for the Holyoke Card & Paper? A. Timothy did, sir; yes, sir.

Q. Incidentally, this Proclamation bill, the ones over the periods of months, is that your handwriting? A. Yes, it is, sir.

Q. And each and every one of these bills from February, March, April, June, July, September and December, they are all in your handwriting? A. Yes, sir.

Q. You must have been the bookkeeper? A. Yes, sir.

Q. Do you know Roger Sullivan? A. Yes, sir.

Q. Who is he? [77] A. He is a member of the Sullivan family, now retired, who was in charge of manufacturing, I believe, at Sullivan Paper Company.

Q. Where is the Sullivan Paper Company located?

A. West Springfield, sir.

Q. Is the Sullivan Paper Company a competitor of the Hazens? A. Yes, sir.

Q. Did you call Roger Sullivan in 1984 to ask him to use the services of Proclamation? A. I called Roger Sullivan in 1984 to introduce him to my son Timothy, sir.

Q. Was that you or Timothy who called him in 1984?

A. We probably both did, sir. I don't know. I don't know whether Tim did or not. I did.

Q. Page 145 of the deposition, Mr. Biggins, you are asked the first day, were you asked this question and give these answer?

Now, did you call Roger Sullivan? Do you know who Roger Sullivan is?

Answer: Yes. Question: Is he an officer or management of the Sullivan Paper Company? Answer: Yes, he is.

[78] Is that a competitor of the Hazen Company?

Yes.

Did you call him in 1984 to urge him to use the services of Proclamation?

Answer: Tim did.

Question: You did not?

I did not call him. No.

Did you not tell us a moment ago that you did call him?

A. Yes, I did call him.

Q. Which is correct now, what you told me back in 1988 or what you just said now? A. Can I see what you're talking about?

Q. I'm sorry. Of course you can. Forgive me.

It starts there and goes to the top of the next page.

A. I stand by that, sir. I said I did not call him.

Did I have a meeting with Mr. Sullivan, Roger Sullivan?
Yes, I believe I did.

I didn't call him to get him to use — to buy the services of the company, I had lunch with him. And I introduced my son Timothy to him.

[79] Q. I just asked you a moment ago, I didn't ask you about all those matters, I asked you did you call him. You said you did.

But in your deposition I think you will agree you said you did not. Is that not correct?

A. Did you call him in 1984 to urge him to use the services of Proclamation?

Tim did.

You did not?

I did not call him, no, to use the services of Proclamation. Timothy did, sir.

Q. Is that what it says at the top of the second page?

A. I did not call him, no.

Did you have a meeting with Sullivan?

Roger Sullivan, yes, I believe I did.

Q. But the top of the second page that was just read, was: I did not call him, no. A. To offer the services of Proclamation, sir.

Q. Okay.

But you eventually met with him for lunch; is that correct?

A. Yes, sir.

Q. At the luncheon meeting, did you offer [80] the services of Proclamation? A. Timothy did, sir.

Q. What did you do during the lunch meeting? A. Introduced my son to Roger Sullivan, and my son made the presentation.

Q. You sat back and said nothing during the course of that luncheon? A. Oh, I might have said something, but it was Timothy's sales call, sir.

THE COURT: Are you about to start a new subject matter?

MR. McGINLEY: I have a couple more things on this area, your Honor.

THE COURT: All right. Finish this area and then we will take a break.

Q. (By Mr. McGinley) If I may, I would like to show you another statement from Proclamation, ostensibly to the Sullivan Paper Company.

Do you recognize that? A. Yes, sir.

Q. Bill from Proclamation to the Sullivan Paper Company?

A. Yes, sir.

Q. And the date of that is July 17th, 1984?

* * *

[87] A. Yes, sir.

Q. Who did you arrange that stipend with? A. The President of the company, sir.

Q. Who was that? A. Thomas Sullivan.

Q. Thomas Sullivan? A. Yes, sir.

Q. He's different than the Roger Sullivan I asked you about; is he not? A. Yes, sir.

Q. Did you ever tell Tom Hazen that Proclamation or W.F. Biggins, Inc. would be doing work for his competitors?

A. No, sir.

Q. Do you know Hampden Paper? A. Yes, sir.

Q. Where are they located? A. Holyoke, sir.

Q. Are they competitors of the Hazen Company? A. Yes, sir.

Q. Incidentally, did you apply to Hampden Paper for a job before coming to Hazen? A. No, sir.

Q. Did you offer the services of W.F. [88] Biggins, Inc. to Hampden? A. No, sir.

Q. Did you offer the services of Proclamation to Hampden? A. No, sir.

Q. Did you ever contact anyone at Hampden Paper concerning work by Proclamation? A. Yes, sir.

Q. Who? A. Ken Scott, sir.

Q. And how did you approach Mr. Scott? A. I called him on the phone, sir.

Q. Did you meet with him? A. Yes, sir.

Q. When was that? A. I don't know. It must have been in 1984, sir.

Q. Did you ever write him a letter? A. I may have, sir. I don't know.

Q. Let me show you this letter.

I ask you whether or not you wrote this September 13th, 1984 letter to Ken Scott at Hampden, soliciting business for the Proclamation Company? A. Yes, sir, I did.

MR. MCGINLEY: I offer this, your [89] Honor, in evidence.

THE COURT: All right. Exhibit K in evidence.

(Defendant's Exhibit K marked in evidence.)

Q. (By Mr. McGinley) Now, when you wrote to Ken Scott on September 13th, 1984, you thanked him for permitting you to demonstrate your — our process, I think you called it?

A. Yes, sir.

Q. What process was that? A. That was the solvent recovery process.

Q. You finished the letter by asking whether you can consider Hampden Paper as a new customer? A. Yes, sir.

Q. September 13th, 1984, you were still employed by the Hazen Company; were you not? A. Yes, sir.

Q. Did you ever offer the services of W.F. Biggins to Hampden Paper Company? A. No, sir.

Q. Did anyone ever offer the services of W.F. Biggins to the Hampden Paper Company?

MR. CAHILLANE: Objection.

* * *

[96] . . . couple days. He said some days short.

MR. MCGINLEY: Thank you, your Honor.

Q. (By Mr. McGinley) Some days short? A. Yes, sir.

Q. Now, is that a correct statement? A. May I qualify that, sir?

Q. I wish you would.

A. It depends on the reference. And I've had several discussions with several people about that, sir.

Q. Well, didn't the Hazen Company send you over to their retirement expert to find out exactly how long and how much you would have in that particular plan?

Didn't you go over there? A. Yes, sir.

Q. To the Pension Associates and ask them? A. Yes, sir.

Q. Weren't you eight months shy of your pension vesting?

A. That's what he said, sir. Yes, sir.

MR. MCGINLEY: No further questions.

THE COURT: All right. Redirect?

* * *

[124] . . . Hazen in June of 1986? A. Yes.

Q. And were you involved in an inquiry that was sent by the Department of — Division of Employment Security to Hazen Paper Company concerning Walter Biggins? A. Yes.

Q. Did you have to get financial information to fill in in responding to that inquiry with regard to Mr. Biggins's wages?

A. Yes.

Q. And did you also have to fill in the reason for his separation? A. Yes.

Q. And whether or not the separation was partial, temporary or permanent.

Now, is it fair to say at that time you had no information with regard to why Walter Biggins left the company yourself?

A. That's correct.

Q. And you had to go to someone else to get that information? A. Yes.

Q. And to whom did you go, ma'am? A. Mr. Hazen.
 [125] Q. Which Mr. Hazen? A. Mr. Thomas Hazen.
 Thomas Hazen.

Q. See if you can identify your signature on that document. A. That is my signature.

Q. Can you identify that document? A. Yes.

Q. And when did you send that to the Commonwealth of Massachusetts, Division of Employment Security? A. I believe there is a seven-day limit. It has to be in the mail within seven days, so I generally prepare these very quickly and mail them out within a day.

Q. And do you know what the purpose is of the inquiry?
 A. Yes, it is.

Q. Is to determine whether or not the applicant is eligible for unemployment benefits? A. Partly, yes. I guess to open up a claim, and this is part of the procedure.

Q. Can you tell from the date when you signed and sent this back to the Division of Employment Security? The date would be the second line under your name. [126] A. June 30th, 1986.

Q. And in order to find the reason for separation, the correct box to check, you went to Thomas Hazen? A. Yes.

Q. Okay.

The reasons that the State gives you to check is lack of work, voluntary quit, discharge, labor dispute or other; correct? A. Correct.

Q. And what did Thomas Hazen tell you to check?

A. Voluntary quit.

Q. Ma'am? A. Voluntary quit.

Q. So far as you advised the State, based upon what you were told by Thomas Hazen, Walter Biggins voluntary quit his position at Hazen Paper Company? A. That's correct.

MR. EGAN: I would like to offer that, your Honor, please.

THE COURT: May go in as Exhibit 18.

MR. MCGINLEY: No objection, your ...

. . .

[180] to Schedule 2 that you showed, you have one item called pension plan overfunding. A. Correct.

Q. And you have an amount of forty thousand dollars for '83 and '84; and it skyrockets to 366,000 in '85 and continues to 348,000 in '86, 421,000 in '87.

What are those numbers, pension plan overfunding?

A. Those are coming from the footnotes to the financial statements.

Q. Well, do those numbers indicate monies that the Hazens had put into their pension fund? A. Yes. That's correct.

Q. And it looks as though they were putting more and more money into the employees' pension funds as the years went by?

A. More money than was required to satisfy the actual actuarial liabilities of the plan at those points in time.

Q. They were putting in even more money than that?

A. That is correct.

Q. Thanks, Mr. Moriarty.

THE COURT: All right. Redirect?

. . .

[July 18, 1990, Volume III, p 12]

ROBERT HUTCHINSON, SWORN

DIRECT EXAMINATION BY MR. CAHILLANE

Q. Could you state your name, please? A. Robert Hutchinson.

Q. What is your residential address? A. 31 Buttonwood Lane, Doylestown, Pennsylvania.

Q. How old are you? A. I'm sixty-eight.

Q. What is your present occupation? A. Manufacturers' representative.

Q. And could you explain to the jury what that is? A. Yes. I think this is important.

We are direct commission agents for several different companies.

And what that means is that we have contracts with five different companies, and with those five different companies, we sell their products. We are their sales arm, and we just sell their products. We get commissions from each one of these companies.

THE COURT: On the product you sell?

* * *

[35] CROSS EXAMINATION BY MR. RANDALL

Q. Mr. Hutchinson, there's been some discussion in your direct testimony about being a manufacturers' representative; there has been testimony about the kinds of commissions that your company earned.

Could you tell us what kind of expenses are associated with being a manufacturers' representative?

What does it cost you to perform this function, aside from the risk you may do it and not get paid, what does it cost you regardless of whether or not you get paid? A. I'm glad you used the word risk, because it is a high risk business. Because if you lose one line, it takes a big cut out of your income.

And as I made comment earlier, we cover North America. We travel from Seattle to San Diego to Dallas, Texas, to Fort Myers, Florida, which is my territory. To Montreal, to Maine, to Toronto.

And our expenses are very, very high. We exceed the standard, if there is such a standard. We are most unusual in that we have found that we are the only manufacturers' representatives [36] in the pressure sensitive industry that travel a whole — the whole United States and Canada.

Most commission agents, most of the manufacturers' agents travel a territory, and the territory could consist of either a state like the State of Massachusetts, or Massachusetts, New Hampshire, Vermont and Maine. And that is a territory.

So when you ask that question, there is no relationship between what a territorial rep costs are and our costs. And our rule of thumb basically is that one of our prime principals pays for our travel, and the other one pays for our income.

So when you ask that question, it varies. It can vary all over the —

Q. First of all, how many sales people do you have working for you? A. Well, up until a month ago, we lost a salesman, we had four sales people on the road, including myself.

Q. So four on the road, and you have had a salary for each of those; is that correct? A. I beg your pardon?

Q. You paid a salary? A. Salary and bonus.

[37] Q. What would it cost you approximately in dollars and cents, what would it cost you a year to put one of those people out on the road? A. Just on travel expenses alone, just travel expenses, it's renting a car like for coming up here, that sort of thing, is nevertheless twenty-five thousand dollars. That's just for airline tickets and rental cars.

Q. Twenty-five thousand dollars per salesman? A. Per salesman.

Q. You then have the salary, bonus on top of that?

A. Retirement, Social Security, health plans.

THE COURT: Does that twenty-five thousand include hotel and food and all of that business?

THE WITNESS: It's really more than that. It's basically the travel expenses, the food is the minor part of our expenses. Entertainment is high.

THE COURT: You take customers to dinner, that sort of thing?

THE WITNESS: Yes. That's at least [38] another five to ten thousand dollars a year.

Q. (By Mr. Randall) Do you have any rental expense?

A. Yes.

Q. Office expense? A. Yes, yes.

Q. Now, I'm sorry, I interrupted you. Go ahead. A. No, I'm saying yes.

Q. Yesterday there had been some testimony, either yesterday or the day before that your office was in your home.

Now, is your office located in your home? A. No. It has not been for many years.

Q. Has Mr. Biggins ever been to your office? A. Yes.

Q. Do you represent or do you sell all the Hazen product line? A. We are permitted to sell all of the Hazen Paper product lines, yes, sir.

Q. I know you're permitted to, but do you in fact do that?

A. No.

Q. Are you familiar with the Hazen Paper Company's competitors in the product lines you don't . . .

. . .

[40] . . . pull the masking tape off.

So that's basically it. It was a converter. It's a converting field. Treatment of paper.

Q. When you were at W.R. Grace, did you have a non-competition agreement with them? A. Yes.

Q. For how long a period of time was that? A. Two years.

Q. And do you even have one with your own company now, Hutchinson and Miller? A. Yes.

Q. How long a period of time is that? A. Two years.

Q. So if you leave Hutchinson and Miller, you can't compete with your own company for two years; is that right? A. I better not.

Q. In your experience in the industry and the traveling you do, is that fairly common in the paper converting industry?

A. Yes.

Q. The products you sell for Hazen Company, we have heard his Honor talk about the lottery tickets, so forth; those lottery tickets used this . . .

. . .

. . . [51] memory when approximately that was?

MR. CAHILLANE: Your Honor, I'm going to object on the grounds that this was not covered in direct.

THE COURT: Well, it wasn't, but he could easily use him as his own witness, so let's save time. You can bring him right back again as your own witness.

MR. RANDALL: Thank you, your Honor.

Q. (By Mr. Randall) Well, Mr. Hutchinson, let me try and pin it down.

Was he still at Hazen Paper Company when you had that discussion? A. Yes.

Q. And could you tell us what the discussion was, content of it? A. That he had come up with a process which he thought was a great idea for portable solvent recovery system.

And the way he had explained it to me was that on this — on a truck bed, he could put — he had equipment that he could drive up to an ink company door or somebody who uses ink and reclaim the solvent.

They would bring their ink to the truck [52] and through the — through the system that he had, recover the solvent.

Q. And did he discuss anything else with you about that during the conversation?

Did he ask you to keep that information confidential?

A. Yes.

MR. CAHILLANE: Objection, your Honor. If he is treating him as his own witness, I don't see how he could lead this way.

THE COURT: Stay away from leading questions.

Q. (By Mr. Randall) What else was said during that conversation; what else did Mr. Biggins say to you? A. You've already indicated what he did ask me, to keep it in confidence, and I did state that I would. And I did.

I absolutely did, until I was aware of this trial.

Q. You've been in the paper converting business for a good number of years; you testified twenty-four years as a salesman, and before that you were with W.R. Grace.

Are you generally familiar with . . .

* * *

[57] REDIRECT EXAMINATION BY MR. CAHILLANE

Q. You were asked by Mr. Randall about non-competition agreements, Mr. Hutchinson.

You indicated that you had one yourself with your company, and that you felt that the two years that you had might well be typical, at least in your business? A. Yes, it is.

Q. Would it be typical in that business for you to have a different period of non-competition for a younger person, if they had such an agreement? A. The format we used, we belonged to an organization called Manufacturers Agents National Association.

And this group is consistent of somewhere between ten and fifteen thousand manufacturers' representatives. And they have a specimen recommendation for non-competition agreements, subagents, you know, that sort of thing.

And so we took that as the format we use, and obviously, for agents, that was the acceptable thing.

We didn't question it, because it followed the same non-competitive agreement we had, I [58] had with them.

Q. Was there any recommendation on there that there should be a shorter or longer period of time for older people?

A. No.

Q. As a matter of fact, does your son work for you in the business? A. Yes.

Q. Does he have such an agreement? A. He sure does.

Q. Did you give him a different non-competition time? A. No.

Q. How many younger accounts do you service, Mr. Hutchinson? A. Accounts?

Q. Aside from Hazen, I'm talking about people. A. Principals, four other principals.

Q. So you have a total of five, including Hazen? A. Yes.

Q. Now, you mentioned you had discussion about the value that's added to the product as it goes along in the process, and the significance of . . .

* * *

[63] A. W.F. Biggins.

Q. Entity you actually work for? A. A company named W.F. Biggins, Associates, Incorporated.

Q. And in June of 1986, at the time your father was fired, was that your occupation at that time? A. Yes, it was.

Q. And approximately in June of 1986, how long had W.F. Biggins, Associates existed at that point? A. Almost one year. Started in 1985, the Summer of 1985.

Q. And prior to the time that your father was fired, who worked for W.F. Biggins, Associates? A. Myself.

Q. And anyone else? A. No.

Q. Did your father do any work for W.F. Biggins, Associates prior to June of 1986? A. Yeah, he would help me on certain necessities of getting the business ready.

In fact, it was kind of a family effort.

Q. Approximately how much time are we talking about, on your father's behalf? [64] A. I was lucky if I could get something out of him on the weekends, some time on the weekends.

Q. Now, up until the time your father was fired in June of '86, did your father receive any income or pay from W.F. Biggins & Associates? A. No, he did not.

Q. Up to that point in time, did you receive any income or pay from W.F. Biggins, Associates? A. No, I did not.

Q. Did your father prior to June of 1986 solicit any customers for W.F. Biggins, Associates? A. No, he did not.

Q. Did you solicit customers? A. Yes, I did.

Q. And did you in fact have records of the work you did in terms of soliciting customers for the business? A. Yes, it was

my — you know, I was still new at doing sales, so I was keeping very close records on everyone I was making calls on, or calling on the telephone.

Q. And when you say making calls on or calling on the phone, what do you mean by making calls; talking in person?

[65] A. In a personal appointment with someone at a particular company.

Q. Do you know approximately how many of those you made prior to June of 1986? A. Maybe fifty companies, fifty visits.

Q. And in terms of phone calls, about how many are we talking about? A. I'm not really sure. Hundreds, I'm sure. I'm not really sure.

Q. Did you keep records of all of those persons or phone calls? A. Yes, I did.

Q. And do you have those with you here today? A. Yes, I do.

MR. CAHILLANE: Your Honor, I would like to offer the records of the personal calls that Mr. Biggins made.

MR. MCGINLEY: I would like to see them, your Honor.

THE COURT: Show it to him.

MR. CAHILLANE: I did not intend to offer the records of the phone calls because they are quite voluminous, and perhaps not accumulative, but perhaps overkill to put all that in.

[66] MR. MCGINLEY: May I have a brief voir dire, your Honor?

THE COURT: You will be able to cross examine him on it.

MR. MCGINLEY: Shall I wait until then?

THE COURT: Sure. I will allow them in evidence, de bene, at least. 24 in evidence.

(Plaintiff's Exhibit 24 marked in evidence de bene.)

Q. (By Mr. Cahillane) Of those approximately fifty personal calls that you made, did it include the Sullivan Paper Company? A. Yes, I believe it did at that time.

Q. Did it include Holyoke Card & Paper? A. Yes, it did.

Q. And did it include Hampden Paper Company? A. Yes, I believe so.

Q. Now, in May of 1986 were you scheduled to speak at an early May 1986 meeting, were you scheduled to speak at a particular meeting? A. Yes, I was.

Q. And what meeting was that? A. The API meeting.

Q. What is API? [67] A. It was a division of the API, the Decorative Printers Division. I'm not sure of the exact meaning of Associated Printers.

Q. What is the group that you were talking about? A. It's a collection of people who are in the printing industry.

This particular division of the group would be those who would be doing decorative paper printing, or paper converting by applying decorative print to paper.

Q. I take it from what you're saying is that these different companies have meetings together? A. Yes, they do. They have an annual meeting as I understand it, and maybe special meetings on occasion.

Q. And how did it come about that you were scheduled to speak at this meeting? A. I was asked by Eric Fuller to address the meeting, since I had presented him our program on a sales call. That would be W.F. Biggins, Associates, Incorporated program for complying with the new Right-to-Know law.

He felt that my expertise would be [68] valuable for him and his competitors in the industry, as far as their compliance with this new up and coming regulation.

Q. He wanted you to share the information with them?

A. That's correct.

Q. Now, who is Eric Fuller? A. He is the President of the Holyoke Card & Paper Company.

Q. Now, did you learn at some point that you were not going to speak at that meeting? A. Yes, I did.

Q. How did you learn that and what did you learn? A. I received a call from Eric Fuller, telling me not to show up at the meeting because he had been asked by another member to prevent my speaking at the meeting.

Q. Did he tell you who that was? A. Yes, he did.

Q. Who was it? A. It was Thomas Hazen.

Q. Did your father after he was fired in June of 1986, later join W.F. Biggins, Associates? A. Yes, he did.

[69] Q. And when was that? A. It was after, about a month after he got fired. Sometime in July.

I made him an offer he couldn't refuse.

Q. Now, are you also familiar with a company called Proclamation, Incorporated? A. Yes, I am.

Q. What was Proclamation, Incorporated? A. It was a company which had developed, or developed a system to reclaim printing inks and printing solvents.

Q. And what was — when was this company formed, if you know? A. In 1983.

Q. And what was your relationship to the company? A. I was Vice President of the company.

Q. And starting in 1983, who worked for Proclamation, Inc.? A. I did.

Q. Did anyone else? A. No.

Q. Did your father do any work for Proclamation, Inc.?

A. He came up with the initial design on the [70] system, and would once in a while hold a wrench for me or something on weekends or something like that. But that's about the extent of it.

Q. Who built the system? A. I did. Initially it was constructed, I oversaw the construction of the initial design of the system at a private engineering corporation in West Springfield.

But subsequent revisions of the hardware, so forth, I did all the work on it.

Q. And how long was Proclamation in existence? A. Just approximately one year. Maybe a little bit over a year.

Q. So it stopped business in approximately one year?

A. End of '84.

Q. And did Proclamation make any money? A. No.

Q. Did you make any income from Proclamation? A. No, I took no income.

Q. Did your father make any income from Proclamation, Inc.? A. No, he did not.

* * *

[77] ... a little over a year? A. That's correct.

Q. Don't you use those anymore? A. No, and — no, I do not use them anymore.

Q. Okay.

When W.F. Biggins, Inc. was formed, I think you told us you were an officer of that corporation? A. Yes, that's correct.

Q. Now, let me show you the Dun & Bradstreet report again.

You're not listed on this as an officer; is that correct?

A. This is the first time I've seen this.

Q. Take your time to look at it. A. Thank you.

No, it seems they have just listed the chief executive officer.

Q. Mr. Walter Biggins? A. That's correct.

Q. Thank you.

Now, you didn't make any money I think you told us from the W.F. Biggins, Incorporated; is that a correct statement?

A. Not for which time?

* * *

[95] A. Yes.

Q. What did you talk about? A. I mostly listened.

Q. What did he talk about? A. Walt was upset. He was — he felt that he wasn't getting his fair share of the business that he had developed this particular acrylic coating.

THE COURT: With reference to time, when did this trip occur?

THE WITNESS: June of 1985.

THE COURT: 1985?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: And I remember Walt going on about that he had asked for a raise, and nothing really had happened.

And also that he had said that he could — he would not develop more products for Hazen Paper Company.

Q. (By Mr. Randall) All right.

He told you that on the plane trip? A. Yes, sir.

Q. What was your response to him? A. I was pretty shocked.

* * *

[130] A. Well, when the law went into effect, the company was required by the middle of May to train all the personnel within the plant on all aspects required by the Right-to-Know, which was all the hazards connected with working both with chemicals, physical and whatnot.

Mr. Biggins approached me sometime in late January or February with a proposal to train our personnel and gave me some figures, and I thought well, at that point we had about a hundred and twenty-five employees, I thought that perhaps since it was going to be an ongoing requirement of the company, that we should set up our own training program, which we did.

Q. I see. But who was it that visited you, and you said February of 1986, Walter Biggins or Timothy Biggins? A. Walter Biggins.

Q. And was it Walter Biggins who made the presentation as to what W.F. Biggins, Inc. could do for your company?

A. To the best of my knowledge, yes.

Q. Now, tell me a little bit about the nature of the business of the Sullivan Paper Company.

[131] What kind of work does the Sullivan Paper Company do?

A. We are classified as a paper converter. They have eight roller gravure presses, about thirty-seven embossing machines. Three guillotines. Three sheeters. Half a dozen slitters. A collator.

And the type of work that we did was add value primarily to paper, which means that we printed designs on paper for box gift wrap, notebook liners, picture frames, book covers, almost every market that's available for that type of substrate.

Q. Several of those lines sound very familiar.

Are they similar to what the Hazen Company does?

A. Hazen Paper Company as well as Holyoke Card and Hampden were what we considered good competitors in our area. We competed more in commodity items than some of the small areas that we got involved in.

Q. Now, you told us about Walter Biggins contacting you in May of 19 — I'm sorry, February of 1986.

I want you to think back now to 1984, [132] whether in that year you were contacted with respect to a company named Proclamation, Inc.? A. Yes. At that particular point in time, I had lunch with Walter and his son Timothy at the Windmill.

They came up with a proposal whereby we could dispose of our waste solvents and waste inks by a vacuum distillation system, which he and his son had in a portable unit on the truck.

Q. Now, if you can remember, who at the lunch described for you what the Proclamation Company would do for solvent?

A. Pretty much Walter. Tim contributed some. He was kind of young and fresh out of college.

Q. Did you utilize the services of Proclamation? A. Not immediately, but after thinking about it for a while, I thought that we should have a secondary source of disposal, and I did contact Proclamation, or whatever the name of the company was, and Tim came with the portable unit and distilled three 50-gallon drums with crystal clear solvents; excellent quality as far as recovery was concerned.

And we were then billed for this at \$150 ...

* * *

[145] REDIRECT EXAMINATION BY MR. MCGINLEY

Q. Mr. Cahillane mentioned a trade meeting, Mr. Sullivan. Do you remember in the Spring of 1986 coming back from Boston? A. Yes, I do.

Q. And during that trip back, was there discussion about Walter Biggins being a speaker at the trade meeting?

MR. CAHILLANE: Objection, your Honor. I don't believe I covered that on cross examination.

MR. MCGINLEY: There was talk about trade meetings.

THE COURT: He talked about trade meetings, I think. But I don't remember any conversations.

MR. MCGINLEY: It's very short, your Honor.

THE COURT: All right.

MR. CAHILLANE: Whether it's short wouldn't matter. It wasn't the subject matter of redirect.

THE COURT: I'll allow him.

THE WITNESS: We were returning [146] from a meeting of the DEQE, which is the environmental agency for the State of Massachusetts, and the occupants of our van were local people in this area that were involved in the environmental affairs.

And we were — we all belonged to a trade association, which was looking for a speaker for the third week in May. And Malcolm Gezner, who was an employee of Hazen Paper Company, I suggested that he check with Tom Hazen to see if Walter Biggins, one of his employees, could give a talk on the Right-to-Know law, since he was obviously, had a tremendous amount of expertise since he was training people out in the field.

Q. And did you subsequently hear from Tom Hazen?

A. In about two or three weeks, yes, I did.

Q. And was there a telephone call from him? A. Yes, there was. Unusual telephone call.

Q. Unusual in what sense? A. Well, to begin with, Tom talked for about an hour and forty minutes.

MR. CAHILLANE: Objection.

THE COURT: He may answer.

THE WITNESS: Tom Hazen talked for [147] about an hour and forty minutes; the principal subject of the conversation was Walter Biggins and what relationship I had had with him at Sullivan Paper Company in the two years previous, in that particular year.

Q. (By Mr. McGinley) Was there any further discussion about appearing at the meeting for the Right-to-Know speech?

A. This conversation was after the fact. That is the telephone conversation.

MR. MCGINLEY: Thank you, your Honor.

THE COURT: All right. Cross examination?

MR. CAHILLANE: No questions, your Honor.

THE COURT: Step down. You're excused.

Defendants may call their next witness.

MR. MCGINLEY: Mr. Scott, please.

* * *

[156] THE WITNESS: August of '84, the 24th, a Tuesday.

Q. (By Mr. McGinley) You had lunch with Walter Biggins? A. Yes.

Q. Was that to discuss Proclamation? A. That I believe was the date that we did the experiment out behind the factory with the portable unit.

Q. Now, did you have an employee working at your company named Tim McDonald? A. Yes, Tim was a research chemist who worked with us for ten years.

Q. Tim McDonald, where is he now, if you know?

A. He's the technical director at Hazen right now.

Q. Do you know the circumstances under which he left the Hampden Paper Company? A. Well, Tim is an extremely good research chemist. A good scientist.

And unfortunately, he's ten years younger than I am, and he had no upward mobility within our corporation. He was with us for ten years and did a good job for us.

[160] CROSS EXAMINATION BY MR. EGAN

Q. Mr. Scott, you said that you did not have a covenant not to compete with Hampden Paper Company; is that correct?

A. That's correct.

Q. And when did you go to work for Hampden Paper Company, sir? A. October 1962.

Q. Any period of time since October of 1962, have you had a contract with them? A. No.

Q. Is your job described anywhere? A. Yes. I guess it would be.

Q. In a job description? A. Yes.

Q. Was that job description given to you? A. No. It's something I would write myself.

Q. Something you wrote yourself? A. Yes. I don't really have a technical superior within the organization.

Q. Okay.

Now, Mr. McDonald, how old was he when he left your employment, approximately? A. Boy, I would guess thirty-five, . . .

[174] CROSS EXAMINATION BY MR. CAHILLANE

Q. There isn't any question, Mr. Fuller, that it was Timothy Biggins who was going to get up and speak at this meeting; correct? A. That's correct.

Q. And it was Timothy Biggins who came to you and talked to you about the Right-to-Know business? A. Tim made the visit in my office with the promotional material.

Q. And back in 1983 or 1984, you described a discussion with respect to Proclamation that occurred in a van coming back or going to Boston? A. Yes.

Q. And who was in that van? A. There were a lot of trips to Boston for a lot of years.

I could give you the probable occupants, but I can't be positive.

Q. Could Malcolm Gezner have been in that van?

A. Could have been.

Q. Who was Malcolm Gezner? A. Walter was the technical director in [175] Hazen, and I believe that Malcolm was Vice President perhaps of Manufacturing. I don't know his title exactly, I'm not sure.

But I knew them both equally.

Q. At Hazen Paper Company? A. At Hazen.

Q. And in this conversation which Walter is talking about Proclamation, he was doing it openly with Mr. Gezner present, wasn't he? A. I just can't recall.

MR. CAHILLANE: That's all I have.

THE COURT: All right. Anything further?

MR. MCGINLEY: Nothing further.

THE COURT: Step down.

Call your next witness.

MR. CAHILLANE: May we have a side bar, your Honor?

THE COURT: Very well.

(*Bench conference held.*)

MR. EGAN: This witness is not on the witness list.

MR. RANDALL: They never asked us. My understanding is that in their interrogatories and questions, they never asked us . . .

[214] . . . kind of bothers me because it correlates with my gut feeling that Walter's interest was slacking off, and since I have been involved in this legal maneuvering, I learned that Walter had done a lot of back treatment work at one of his previous companies. I think it was at the Brown Company, or perhaps Ludlow. Ludlow would make more sense.

So he had some background in coming up with back treatments, but never produced one for the Hazen Paper Company, at least on that product.

Q. Did Walter Biggins ever discuss the possibility of a raise while he was at the Hazen Paper Company? A. Walter Biggins talked about how underpaid he was very, very often.

Q. Do you recall any particular lunch meeting where you discussed his salary with him? A. I'm sure — and again, just because I've read the record, I'm sure there were at least two occasions where Tom and I had lunch with Walter, and he gave us this pitch again about how underpaid he was, and I think we reacted — we increased his pay.

I think it's been indicated we increased it by ten percent. That's a lot.

You look at the contracts that are signed [215] these days, and most of them are two or three percent range. Ten percent is a big increase. I know Walter didn't think so, but to us it was a big increase.

Q. Now, was that the result of both those luncheon meetings that you can recall? A. To be honest, I don't recall exactly what the increase is. And I'm not even sure that he was increased each time. But I'm relatively sure that he was.

Q. How did he rank in the company at the time; let's say in the year 1985, rank in the company when it came to a pay scale? A. Walter was the fourth highest paid employee at Hazen. Tom and Bob Hazen were paid the same amount.

Q. Do you recall how much that was? A. I don't honestly remember. The records are here. I'm sure that information is available.

The next man was a man named Malcolm Gezner, who had been with us for, I'm guessing twenty years, he was the next highest paid. The next one down was Walter Biggins. And he had been with us for eight years.

Q. How many people were in the company at ...

. . .

[217] Q. Now, you've indicated that you thought Walter Biggins' performance had changed over the passage of time.

Prior now to 1986, did your attitude towards Walter Biggins change during that passage of time? A. Well, I got very impatient with his frequent increases for increased salary. I got impatient with the length of time it took him to develop these products.

I had the gut feeling that he just wasn't as interested in Hazen as he was in 1980. I don't think that, you know, we were — Hazen is, probably a criticism of Hazen might well be that we are understaffed. We worked too hard.

I'm just thinking about myself, I'm talking about these people that were in here today that you heard. I'm talking about my cousin Tom. We normally work Saturdays. And we have been doing that for God, twenty-five years.

I don't know what I was getting at. What did you ask me?

Q. I asked you whether your attitude towards Walter Biggins had changed over the years. A. I guess my point in all this rigamarole ...

. . .

[219] ...with him at any time you took a trip with him? A. That's really kind of ludicrous, but as we mentioned this morning, I have a horrible habit. I smoke, and I've got to stop.

But I sit in the smoking section on airplanes. Walter is a nonsmoker, and chooses to sit in the nonsmoking section.

That seems pretty simple.

Q. Did there ever come a time when you stopped taking Walter Biggins on trips for any particular reason? A. I don't remember anything. Certainly to me, my gut feeling was that the interest wasn't there.

I might well have stopped, but I don't recall making a conscious decision to do that.

Q. You never said to him you're not going on any[] more trips, Walter, or anything like that? A. I don't believe I did.

Q. Now, had you ever heard about the existence of Proclamation, while you were working away at Hazen?

A. It seems to me he told me about that. And I'm not sure when it may have been. I'm not sure when. It may have been '84.

[220] And he told me, because Walter had come to talk, I believe, and said: Look, I have a company. He didn't say: I had a company. Walter said: My son is starting up a company to recycle solvents. I want to help him out.

Tom said: I'm nervous about that, make sure he doesn't call on our competitors. Walter promised Tom that this company would not call on our competitors.

Q. And did you ever learn at the Hazen Company that that company Proclamation did in fact call on your competitors?

A. I think we had confirmation of this, or pretty good inkling of that in the Spring of 1986. I'm sure we had a pretty good inkling in the Spring of 1986. I don't remember knowing, because I think we would have reacted to it, that Walter was indeed making contact with our competitors in the Holyoke-Springfield area selling a system that he helped develop at the Hazen Paper Company.

He got all the wrinkles out of it at Hazen, and there were wrinkles. We spent a lot of money and several other people worked on this still at Hazen.

We got things, wrinkles out of it and [221] then Walter proceeded to sell that knowledge to our competitors. Not for anybody's gain at Hazen, for Walter Biggins' gain.

Not only is that deceitful, it's — he took time away from the company. He was fully paid in 1985. He got what, seventy-five thousand dollars?

Not only was he fully paid that year — well, I'm wrong, though. It was '84 when all this still thing was going on. I cannot remember what he was paid then, but he was well paid.

He was taking time away from the company when all this still business on his own was taking place, and selling this information, this setup to our competitors, making life easier for them and harder for us, basically. And sticking the gold in his pocket.

And again, you got to go back to the teamwork thing. When we do something, we try to do it as a team. Walter wasn't hurting Bob Hazen, just Bob Hazen or Tom Hazen. Walter Biggins was hurting Gail Manning-Calvanese, who was in here today. He was hurting Bill Izatt that was in here today. He was hurting everybody that worked on the project by his action of selling this information, this equipment to competitors. Disgusting.

[222] Q. Now, did the Hazen Paper Company, I think you told us earlier they had to comply with the Right-to-Know regulations as well? A. That's right.

Q. And at the Hazen Paper Company, who is in charge with complying with those regulations? A. Well, it was Walter's job. That's part of the Technical Director's job; was to see that we complied with all the Government regulations.

Q. And do you know whether he did that job? A. Walter spent some monies, Hazen money, gaining the knowledge by attending various seminars and certainly during his paid time, gaining the knowledge on how to present this program to our employees, which we were obligated to present, just like every other company.

Q. Do you recall instances where Walter Biggins did make presentations to the Hazen employees on Right-to-Know?

A. I don't, to be honest. I would guess that it was done.

Q. You had to have been at some of them? A. Because we wanted to comply.

Q. You had to have been at some of them; had you not?

[223] A. That's a good point. Yes. You're right.

Q. At any rate, did you ever hear of company called W.F. Biggins, Inc. subsequently? A. I certainly heard about it. But this was very close to the end of Walter's tenure at the Hazen Paper Company.

I think this is really, if this is the straw, this is the one that broke the camel's back.

Clearly, in spite of everything we have heard, W.F. Biggins is not Tim Biggins. W.F. Biggins is Walter Biggins.

Again, he was trading on information that he picked up while he was working for Hazen and selling it to outsiders outside our organization for his own benefit, while he continued to be an employee of the Hazen Paper Company.

Q. You heard Mr. Cahillane ask Mr. Biggins on Monday whether he had ever been counseled by the Hazen Company during the course of his time there by any of these activities; do you remember that? A. I heard that; yes.

Q. Was there any time that you or Tom counseled with him on what he was doing? A. Well, maybe we needed a definition of counsel.

[224] We certainly spoke to Walter about his lack of progress in certain areas and how we needed faster results.

We certainly discussed with Walter the — well, basically the need to produce. To do his job.

Everyone in the organization was depending on our Technical Service Department, our Technical Director to get the job done. And if it's correct, proper English, he was certainly counseled to get on with the job.

Q. Now, do you recall that in May of 1986 the meeting took place with you and Tom Hazen and Walter Biggins? A. May of 1986?

Q. Yes. A. That's the meeting we held with Walter, I believe it's been established that that was a Saturday. Saturday morning.

We asked Walter to come in because we had — Tom has been given this W.F. Biggins brochure, not Timmy, Walter Biggins' brochure.

And we wanted to know what in the world was going on. It seemed clear to us that Walter was again trading on information that he learned while [225] working for the Hazen Paper Company, and trying to represent his own personal gain with our competitors.

We wanted to know what the heck was going on.

I think the result of the meeting as I remember was that Walter, this has got to stop. You can't be working for our com-

petitors and working for the Hazen Paper Company at the same time.

Q. Did Walter have any response at the meeting? A. I'm sure he did. I don't know what it was. You know, I think we were so upset we probably didn't listen very carefully, although I'm not sure.

Certainly the thought that Walter was, oh, what's the right word? You used Benedict Arnold. Certainly, what he did corresponded to what Walter did to not just Bob and Tom Hazen, but to all his fellow employees at Hazen.

It was a deceitful act and I'm amazed that he can handle that himself.

Q. Well, how did the May 24th meeting end? A. I think we told Walter that we were going to come up with a — I'm at a loss.

Q. Non-compete? A. An employment contract. I think that was [226] the suggestion made at the time.

Because we wanted this, you know, it's — and I don't know if we did the right thing or not, but our thinking at the time was that we wanted to retain Walter because we spent a lot of time training him, basically.

Sometimes you're better off when you know somebody's shortcomings than going out and hiring somebody else. You don't know his shortcomings. I'm sure that was part of it. I'm sure part of the training was part of it.

But I think that both Tom and I, we talked about this beforehand, that we wanted to retain Walter, but the only way we would retain him would be to control his outside activities. And that's basically what we were trying to do with the employment contract.

Maybe it was stupid.

Q. Well, he didn't sign this employment contract? A. No, he didn't sign it.

Q. Was there any further communication with him after that that you can recall? A. Oh, I'm sure there was. I think —

Q. Did you wash your hands of it at that . . .

[July 19, 1990, Volume IV, p 10] I ask you to read that over. A. All right.

Q. Now, does that refresh your memory as to whether or not counseling is a word that comes from the Hazen employee handbook? A. Certainly does.

Q. And that Hazen employee handbook, did you review that before that was given to employees? A. I'm sure I had a chance to look at it. I don't know what the date is. 1980.

Q. Okay.

And do you have a subsequent employee handbook?

A. I'm sure we do.

Q. Is that phrase "counseling" still in there? A. I don't have any idea.

Q. Can you tell me whether or not you had said at your deposition that you have been involved in counseling or whatever word you want to use, of employees previously who were dishonest? A. I have?

Q. Yes, sir. A. I don't recall.

Q. Has the company? [11] A. Has the company?

Q. Yes. A. I'm sure over the sixty-year history, we have at one time or another talked to people that were dishonest.

Q. Okay.

Have you also, to use your word now, I'm going to use the word, counseled employees or had the company been involved in counseling employees who were drunks? A. Certainly.

Q. And who were drug addicts? A. I'm sure that's occurred. Very seldom, fortunately, but . . .

Q. Those people were not discharged; correct? A. Incorrect.

Q. They were discharged after counseling? A. I'm sure Hazen has tried over the years —

Q. Just bear with me and answer the question. A. I'm trying to.

Q. With regards to discharge after counseling? [12] A. I'm sure some were and some were not.

Q. Okay.

But your testimony is that you were not involved in any of that? A. No. I said that was incorrect.

Q. I'm sorry.

Were you involved in some of that? A. I have been involved with some employees, yes.

Q. And how did that — what form did that counseling take?

A. I can remember, and I know in my deposition I talked about twenty-three years ago, I don't even know if that's correct, but this was a time when Hazen was quite small and Tom and Bob Hazen got involved in a lot of different subjects, including employee relations. Several more then than now.

I can remember we had one press operator that had been with us for fifteen years, and darn good operator, and he was really a nice guy. I think we regarded him not only as an employee, but we regarded him as a friend.

He had had some very tough personal problems, and he turned to the bottle for whatever [13] you turn to the bottle for. I personally tried to get him off the bottle. Tried to get him back on track and not only with a selfish motive in mind, I liked him. I thought he could recover and do good things for himself.

I can remember making trips to the worse slums that Holyoke had at the time, and visiting the guy to try to get him back in the groove. It didn't work.

Q. You spent a lot of time on that? A. I did indeed.

Q. Gave it a lot of effort? A. Yes.

Q. There were other employees that you counseled in a similar fashion? A. I'm sure I did, but not to the extent that I went with this man.

Q. In that particular instance, how long a period of time did you work with that man? A. I don't recall.

Q. Would you say it was more than six months? A. Probably, but I don't really remember.

Q. Would it be fair to say that you worked with him on a daily basis, checked with him in the [14] plant? A. It's possible. But when he was with us, we occupied a multi-story build-

ing and he worked on the top floor. I worked on the bottom floor, or the next to the bottom floor.

So I didn't see him as often, and perhaps I should have.

Q. So would it be fair to say then weekly? A. Oh, certainly.

Q. And are there other people that you can recall that you may have not — and I don't want names, that you may not have worked with, but have been counseled or assisted by Hazen before they have been let go? A. Oh, I'm sure.

Q. Okay.

Can you give me some instances of employees' dishonesty where you've assisted and counseled before they were let go?

A. I don't think so.

Q. But you did say in your deposition that you do work with people who have been dishonest? A. Yeah, I think that was a general idea that it was the company's policy, to work with people that are not doing what we consider the proper [15] — exhibiting the proper behavior.

MR. EGAN: May I approach?

THE COURT: Yes.

Q. (By Mr. Egan) I'm going to show you your deposition. See if that — this is the question, just read to yourself and see if it helps you. Page 85, Volume 2. Just to yourself. A. Just that page?

Q. You're welcome to turn to the page before, the page after, it if will help you, sir. A. What is the question?

Q. The question is does that refresh your memory as to whether or not the company counseled employees who were dishonest? A. I'm sure we have over the years.

Q. Is it a fair statement to say, Mr. Hazen, that you have a great deal of personal animosity towards Mr. Biggins?

A. Animosity?

Q. Yes, sir. A. Certainly that's true now, once I've found out about his dishonesty at the Hazen Paper Company. No question.

Q. Was it true back in 1984? A. I would say not.

[16] Q. Was it true back in 1985? A. I don't think so.

Q. Was it true back in 1986? A. Certainly after we learned of these outside activities, most definitely.

Q. But you say that your animosity towards him did not develop until let's say April or May of 1986; is that a fair statement? A. That's a fair statement.

Q. Did you call him names when he was in your employment? A. It's possible. I don't believe.

Q. Did you call him names specifically that reflected upon his religious faith? A. I don't remember.

Q. You don't remember?

Did you call him names that reflected upon his ethnic background? A. I don't remember.

Q. Page 118, Volume 2 of your deposition.

I ask you, sir, to read that page and the next page to yourself, please. A. All right.

Q. Does that refresh your memory as to the names you called Mr. Biggins, reflecting on his [17] religious faith and ethnic background when he was in your employ? A. I don't think that's something to be taken very seriously.

Q. Tell the jury what it is you don't think is to be taken very seriously. A. You read it to them.

Q. They are your words, sir.

Tell the jury what it is. A. I can't do it without getting that.

Q. I'll give it to you.

If you read this to refresh your memory, for that phrase, sir. A. All right.

The question is: Did you ever refer to Mr. Biggins as a god-dam Irish Catholic bastard.

And my answer is: "Probably".

Now, in thinking more about this —

Q. That's all I have. A. But you don't want me to tell you the whole truth?

Q. I think you have.

MR. EGAN: No further questions, your Honor.

THE COURT: All right. Your lawyer . . .

. . .

[42] . . . Ottopol 2035 to the Hazen Paper Company? A. Correct. A short while, year or maybe two years after I started with my company, I maintained contact with Hazen Paper and at that time, I suggested that since with the Zinpol 1519 there seemed to be problems, that our Ottopol 2035 might be an improved alternative to the Zinpol 1519.

Q. Did Hazen Paper Company ultimately accept your recommendation? A. Hazen Paper Company evaluated the product and found that they could formulate it into a suitable coating.

And within a relatively short period of time, we were selling substantial amounts of that resin to Hazen Paper Company.

Q. And is that the base product that up until recently, that has been the base of the product, of Hazen Paper's water-based acrylic; is that correct? A. Yes, correct.

Q. Now, there are — in your experience, are there a number of people that have water-based acrylics? A. There are a large number of manufacturers, starting from Rohmhaas, B.F. Goodrich, . . .

. . .

[50] . . . Company now? A. My official position is Treasurer. But I have a lot of responsibilities above and beyond that. It's still a small company.

In addition to being financial officer, I have sales responsibility. I handle the New York market, basically, which is largely cosmetic companies. And photomount companies. And I also handle the binding materials business for the company.

In addition to that, I'm Chairman of the Executive Committee, which is the group that gets together fairly regularly and discusses capital projects and major policy issues for the company.

I have some responsibilities in the human resources area. That is, personnel relations.

Bob and I both supervise, have overall responsibility for supervision of manufacturing, with the Vice President of Manufacturing reporting to both of us.

I supervise directly the Technical Service. That department, that is I'm the company officer to whom the Technical Service Director reports, or Technical Director reports.

Q. How many products does the Hazen Paper . . .

. . .

[67] THE COURT: All right.

MR. MCGINLEY: May I ask about it?

Q. (By Mr. McGinley) Did you utilize it as a guide?

A. Certainly did.

Q. And can you tell us how?

THE COURT: Instead of referring to the magazine, do you feel you paid based upon your knowledge of the trade, the industry, whatever the manual may help you to achieve, that Mr. Biggins was fairly compensated as a person in his caliber, his status in the company?

THE WITNESS: He was certainly at a minimum fairly compensated.

MR. MCGINLEY: Thank you.

THE WITNESS: It is not really a magazine.

MR. EGAN: Your Honor, please. No questions.

THE WITNESS: Oh, okay.

Q. (By Mr. McGinley) Now, was there a subsequent meeting with Mr. Biggins regarding his salary request? A. Subsequent to?

Q. In which you discussed among other [68] things, a stock appreciation rights plan? A. I may have discussed that briefly with him in that January '85 meeting.

Q. January '85 meeting? A. '85 meeting. Yes. I think I told him that the company was considering a plan called stock appreciation rights, or phantom stock options.

It's a quite complicated plan. It really is a deferred compensation, or type of pension.

We would have offered it to a limited number of key executive people. And it was in very informal stages.

I think I mentioned that we were considering that.

Q. What would have to be done to make that plan viable at the Hazen Company? A. Well, it would certainly have to have the agreement of the principals, myself and Bob Hazen.

We were at the time consulting with our legal counsel on the format of the plan.

We were also consulting with our accountants. I had recommended diverse recommendations, our accountant was pretty much [69] against it. And Mr. Robert Hazen was against it.

But we were still considering it. And as late as 1986, we were looking at drafts for this, typical drafts.

It's not a simple document. It is like a pension plan.

Q. Was it ever put into effect? A. No, it was not put into effect.

Q. Even to this day? A. That's correct.

Q. Now, were you ever aware of Mr. Biggins' involvement with a company called Proclamation? A. I never knew the name or certainly not while I was — not while he was employed.

I heard the name since. Proclamation.

Q. Did you have a discussion about a distillation process?

A. With Mr. Biggins?

Q. Yes. This would have been 1983 or '84. A. In '83 or in '84, I don't know whether Mr. Biggins told me about it or one of the other employees told me that Mr. Biggins was somehow involved in a distillation process involving the distillation of waste coatings and inks.

On that occasion, Mr. Biggins and I — [70] I was concerned about what I heard. And I did schedule a meeting with Mr. Biggins at Kelly's Lobster House.

And I talked to him about my concerns about this — the information I was getting about this business.

Mr. Biggins assured me that he was not personally involved, except as an advisor to his son Tim. That they were disposing of waste materials from small auto body paint shops and maybe even garages.

I specifically asked him whether he was going to be involved with competitors of ours, and I told him that would be totally inappropriate, even if it was only his son's activity.

He indicated that that was not what his intention was. And he would not call on the competitors of ours.

I told him — I warned him that that — I thought he was trading on our information. I told him I was uncomfortable because it looked as if he were using expertise he developed while at Hazen Paper Company as an employee for his own business.

But I knew Tim Biggins. I was sympathetic with Tim Biggins, I liked him, and I took [71] Mr. Biggins' word that it really was not going to be a major conflict with our activities.

Q. Did the Hazen Paper Company itself utilize a distillation process in the early '80's? A. That's correct.

We put in — it was a means of disposing of the waste ink and coating.

And rather than sending it to an outside disposal site, which is somewhat dangerous and expensive, the plan was to do it in-house, and we developed a distillation process which we used for a while to deal with the disposal problem.

Q. Who was responsible for this process at the Hazen Paper Company? A. Walter Biggins.

Q. In the development of that process, the distillation process at the Hazen Paper Company, was it ever necessary for Mr. Biggins to go to a company known as James River Graphics? A. I don't know whether it was necessary to or not.

It was — Mr. Biggins and a man named Malcolm Gezner, who is deceased and was the Vice President of Manufacturing, had responsibilities as what we called compliance officers.

* * *

[73] . . . you pay me so much I'll show you how they do it. I know how to do it. We will show you how to dispose of it. We do it that way.

— In other words, that wasn't the case. We didn't pay a third party nor did we pay James River Graphics. But really, the circumstances were totally different.

It would have been more comparable had one of them held us up for money. That would have been what Walter did.

Q. Did you at some time become aware of the existence of a company called W.F. Biggins, Inc.? A. I became aware of the existence of W.F. Biggins, Inc. when Mr. MacMeekin, who testified here yesterday that he came in to see me in April of '86; came in and showed me this brochure that's been shown around here.

Q. I show you Defendant's Exhibit F in evidence and ask you if that is that brochure? A. That's it.

Q. Now, when Mr. Biggins showed — Mr. MacMeekin showed you that brochure, what was your reaction? A. I was dumbfounded. I was very upset. I felt I had been deceived by Walter, and I had been [74] betrayed by him.

Q. Did you eventually show that to Mr. Biggins? A. I showed him the brochure. This would have been near the very end of April. I showed it to him — I think I first showed it to Bob Hazen and Malcolm Gezner.

And within a day or two, I asked Walter to come into my office, and I showed him the brochure and I asked him what the meaning of it was.

Q. What did he say? A. Well, he said this is the business I told you in passing about my son being involved in.

I said this is not your son's business. Or this is W.F. Biggins, Associates. How can this be your son's business? This is your business.

I said this is totally unsatisfactory. I'm very unhappy about this. We are going to investigate it. This is not the end of it.

Q. Now, had Mr. Biggins previously mentioned right-to-work business on behalf of his son to you?

MR. EGAN: I believe it's Right-to-Know.

MR. MCGINLEY: Thank you.

[75] THE WITNESS: Yeah. Probably early '86.

In the course of a discussion about a number of things, Walter told me offhandedly that, by the way, my son has gone into the consulting business.

I asked him: Well, what's it all about?

Of course, Tim had been an employee of ours or I knew Tim and had a certain interest.

Then he told me he was in the Right-to-Know area. And I said: Well, are you involved in this, Walter?

And he said: Oh, no, it's my son's business. I advise him occasionally. But it's my son's business.

That's about the extent of the conversation.

Q. Now, did Mr. Biggins as a part of his job responsibilities at Hazen was in the Right-to-Know area? A. Absolutely. That was his — it was his compliance effort.

And he became very interested in it. He gave it more attention than usual almost.

Q. Did you send him to do any studying on [76] Hazen time?

A. Actually, the issue of the Right-to-Know law and compliance with it came to have been brought to our attention by our human resources employee relations legal consultant a year, eighteen months earlier. They had sent us a whole bunch of material, which I passed on to Walter.

I subsequently, I was concerned. It looked like an awesome amount of material. A thick to-do. It was all very complicated law.

I subsequently wrote our legal advisor and asked him to come in and spend some time with Walter going over the law, and how we might go about complying with it.

Walter, I also think Walter attended an Associated Industries meeting on the subject. He certainly did a lot of work and study while at work at Hazen Paper Company on this project, on the problem.

Q. Was there a meeting in Massachusetts on the clean air requirements sometime after that, after which you telephoned Roger Sullivan? A. Well, I had shown this brochure to Malcolm Gezner and to Bob. There was a meeting of Associated Industries air compliance officers in [77] Boston early in May, and — Malcolm went to that meeting.

He returned from the meeting and reported that people there had asked him whether Mr. Biggins —

MR. EGAN: Objection.

THE COURT: As a result of what he told you, what happened?

THE WITNESS: All right.

Q. (By Mr. McGinley) Don't give us the conversation. Take it to the end.

After having received this information, what then happened? A. Well, one result of what happened was that I called Mr. Sullivan and asked him whether he had been approached by Mr. Biggins about the Right-to-Know, and about his distillation process that Mr. Biggins is now — what I knew to be Mr. Biggins' process.

Mr. Sullivan reported to me he had been approached personally by both —

MR. EGAN: Objection.

THE COURT: He's already testified.

MR. EGAN: That was my objection. It's already been testified to.

[78] THE COURT: You may answer.

Q. (By Mr. McGinley) What did Roger Sullivan tell you?

A. He told me that Walter had personally contracted him, arranged a luncheon meeting with he and his son. And that he conducted trials at Sullivan's with the distillation unit, and he had also been approached on the Right-to-Know by Walter Biggins, not by Tim Biggins.

Q. Now, was this the first occasion you had that Mr. Biggins was dealing with competitors? A. That's the first confirmation of that for sure.

Q. Did you thereafter then meet again with Mr. Biggins and tell him about the Roger Sullivan telephone call? A. Yes, I did.

Q. Can you tell us about that conversation you had with Mr. Biggins? A. Well, I told Mr. Biggins in a brief meeting in my office that I had talked to Roger Sullivan and what he told me.

Mr. Biggins did not deny that he approached Roger Sullivan, and I said this just is further indication of the problem we have [79] previously talked about. It will not end. We are investigating it. We don't know exactly what we are going to do.

I don't know whether at this time or subsequently we scheduled a meeting for the 24th that's been described, the 24th of May between Walter Biggins, myself and Robert Hazen.

We scheduled it for a Saturday to be held in our conference room, so that there would not be any particular attention called to it. And that is what happened there.

Q. Then let's go to the May 24th meeting.

What day of the week was that? A. That was a Saturday.

Q. And what happened at the meeting? A. Well, we again, we outlined our concerns. This was the first time Bob had met on the subject with Walter.

Again, we outlined why we thought that this — these activities were so outrageous.

Q. Did you tell him you would present any documentation?

A. Yes, I'm trying to think.

We talked about the fact that we were in the process of drawing up a confidentiality [80] agreement, which we expected him to review and sign if our employment arrangement was to continue.

Q. And what if anything did Mr. Biggins say at the meeting on the 24th? A. He — I think the surprising thing is that he didn't indicate strong desires to continue his job.

I really, throughout the whole thing I did not get the feeling that — it wasn't as if he was saying gee, I really value my job here, I can see that the problems that my activities have caused the company, he wasn't saying that.

He seemed to still have difficulty understanding why it would be objectionable for the company for him to carry on these activities. The activities are terribly objectionable.

Q. Did there come a time then when you presented the documentation to give to Mr. Biggins? A. Yes.

Q. And — A. The documentation was — the document was prepared in cooperation with our legal advisor, and also we reviewed other confidentiality agreements of other companies. I think we looked at American Pad's agreement. We looked at a Dennison [81] National agreement. We talked to people at James River about the contents of these agreements.

And eventually on the 30th of May, which was a Friday, both Bob and I signed the cover letter, outlining the terms of how it would be accomplished and some of the details, and the confidentiality agreement was attached to that. And it was definitely given to Walter Biggins on May 30th, the afternoon, which was a Friday afternoon.

I was being very cautious to dot my i's and cross my t's. I certainly did not defer doing that until the following Tuesday.

Q. Is this a copy of the agreement which is in evidence, the May 30th memorandum? A. Certainly looks like it, yes.

Q. When you gave that to Mr. Biggins, both the memorandum and the agreement, did he say anything? A. He clearly wasn't happy about it. I believe his comment was that was I going to pay the cost of his attorney to review this.

I felt that really was adding insult to injury. And it was an indication of his whole attitude.

And frankly, I walked out. He described . . .

. . . .

[84] . . . who he's not unfamiliar with —

MR. EGAN: Objection.

THE COURT: That will go out.

MR. EGAN: May I just have a cautionary instruction on that?

THE COURT: Well, the jury has been asked to — I will instruct the jury to disregard the comment.

MR. EGAN: Thank you, your Honor.

THE WITNESS: I just would have thought that if he was seriously interested in continuing his employment he would have gotten back to us earlier the following week with some kind of response.

Q. (By Mr. McGinley) Did you remind him of the deadline that you had given him subsequently? A. I didn't hear from him throughout the whole week.

On the Friday, which would have been a week after I gave him the document, I reminded him that we only had until the following Monday to get this resolved, and he said something, that he would do something about it.

Q. And as it turned out, the following Monday you were in New York and unavailable to meet? [85] A. Yes.

Q. So when did you meet? A. I met him the following day, which was the Tuesday, the 10th.

Q. And were you able to come to any agreement over that document at that time? A. No.

Q. Did you then do anything else by suggestion of any kind of an agreement at that time? A. Well, he certainly had indicated that he wasn't very interested in signing the document.

My sense was that he really was interested in going into the consulting business. He named it after himself.

I suggested that we try and work out a separation agreement, which would cover things like his pension rights; perhaps a pay plan for a temporary basis to ease him through, and other benefits, and would have dealt with things like the unemployment insurance, that we would work out such a separation agreement.

And that we also would work out some kind of a deal where he could do this kind of consulting for us.

We could have used him on a retainer [86] basis. Would have gotten him out of a highly confidential area for us; at the same time it seemed it would be in the interest of both parties to work out an amicable arrangement.

I thought Mr. Biggins was interested in this, but I later found out he was not.

Q. So when did you see him for the last time at that point?

A. I think we met a couple of times during that week.

I thought as late as Thursday of that week that he was really interested in a separation agreement, which would protect both parties. And it would have included some understanding from him about the confidentiality of what he had learned at Hazen. We didn't want him going after, using our customer list and our contacts, and we wanted in return for a monetary benefit, we wanted a confidentiality agreement.

And we would have given him a consultant agreement. And I thought he bought the idea.

There still seemed to be some reservation about any kind of confidentiality agreement. He wasn't talking much. He wasn't saying very much to me, which troubled me. . . .

. . . .

[90] . . . agreement we were talking about.

Q. Use either word. Which one was he talking about?

A. He had indicated he wanted a — I don't know.

Q. What's the word that makes you feel better, I mean, I'm not hung up on the word.

It's money, right? A. Yeah. He wanted additional dollars in order to sign this.

Q. You in substance said you sign the agreement the way it is, there will be nothing about compensation in this agreement; correct? A. I certainly was not going to give him a raise.

Q. Is that in substance what you told him, sir? A. That's right.

Q. Now, you then went and signed an agreement with Timothy McDonald for his position; is that correct?

A. That's correct.

Q. And I ask you, sir, this is a copy of that agreement?

A. Uh-huh.

[91] Q. Is it, sir? A. Yes. This is Mr. McDonald's agreement, yes, it is.

Q. Is that your signature on it? A. Yes.

MR. EGAN: I would offer this, if I may, your Honor.

THE COURT: All right. Plaintiff's Exhibit 25.

(Plaintiff's Exhibit 25 marked in evidence.)

Q. (By Mr. Egan) I will give it to you so you can refer to it.

A. Good.

Q. Fair to say that was signed sometime in the early Fall, I believe, September of 1986? A. September 15th.

Q. Sir? A. September 15th.

Q. Thank you.

And Mr. McDonald's age, approximately? A. About forty-five, forty.

Q. At the time about forty or forty-five? A. Somewhere in there. I don't know precisely.

[92] Q. And did this contain a covenant not to compete?

A. I believe it does.

Q. And can you tell — can you tell me, sir, whether or not that's the same covenant not to compete that you offered to Mr. Hazen in his agreement?

MR. MCGINLEY: Mr. Biggins.

Q. (By Mr. Egan) I'm sorry, Mr. Biggins. A. Very similar except for the term.

Q. As a matter of fact, it's eighteen months less, isn't it?

A. Correct.

Q. Now, sir, did you offer to put in Mr. McDonald's contract his compensation? A. In his employment contract?

Q. Mr. McDonald had an employment contract. Exhibit 25, the one you have in front of you.

Is the compensation in that agreement, Exhibit 25?

A. The actual compensation, I don't believe is in the agreement.

Q. Sir, I reference you to Page 2, the caption Compensation and Benefits. [93] A. Yeah, there is a separate appendix that has the compensation.

Q. The appendix was not produced and is not offered in evidence; correct? A. Apparently not.

Q. It was attached to that? A. Absolutely. Yes.

Q. Thank you, sir.

Now, were you the plant administrator at Hazen Paper Company for the pension retirement plan? A. Yes, that's correct.

Q. And can you just describe how long you — or tell us how long you performed that function? A. Well, I probably have been doing it for quite a while. Long time.

Q. You were doing it as long as Mr. Biggins was employed there? A. That's right.

Q. I'm going to show you a document and ask you, sir, if you are able to identify that? A. Yeah. This is a summary plan description.

Q. Summary plan description? A. It describes the benefits.

Q. It means what, to your understanding? [94] A. Well, it's a relatively brief summary of the benefits and character — characteristics of the plan.

Q. Okay.

And by relatively brief, in this case it's thirty-two pages?

A. Correct.

Q. But — A. Very complicated matter.

Q. As far as pension documents go, that's relatively brief?

A. You notice it is presented by Pension Associates, who frankly I rely very heavily on for these very technical areas.

Q. Pension Associates is your consultant in this pension area? A. That's right.

Q. You know that when Walter Biggins left the company, when he was terminated, did he forfeit some of his pension money? A. I know now that, yeah.

Q. And approximately sixty thousand dollars?

A. I'm not aware of the number.

Q. You don't know that? A. I really don't know the number.

[95] Q. These documents, they come to you at the company?

A. Yes.

Q. Okay.

Those documents are called pension accounts? A. For individual employees.

Q. Goes by individual employees? A. They do. Yes.

Q. That pension account document that comes to you and came to you during times pertinent to this lawsuit shows not only the individual's name, but the value of their account, and the percentage of their cash that is vested; fair statement?

A. Yeah. There are about a hundred of them.

Q. Okay.

And you know that — your obligation as the — or you are the only one that has the obligation at Hazen Paper; that's my understanding? A. I'm basically the — you have to have an officer at the company sign the documents, and I do it.

I rely heavily on Pension Associates for the details.

Q. Your understanding is that an individual [96] who is employed for ten years at Hazen Paper Company is fully vested, or was fully vested back in '86? A. Yeah. The vesting schedule changes with considerable regularity as the tax law changes.

I frankly might not even have been aware at that time.

Q. Back in '86 you were aware that the pension was fully vested after that time? A. I doubt that I was conscious of it. I rely on them.

Q. How long did Walter Biggins work at Hazen Paper Company? A. He worked a little over nine years.

Q. Okay.

And are you aware of anything in the plan document that provided in 1986 that if an employee worked over five years for Hazen Paper Company, he got an additional year credit towards his vesting? A. No.

Q. I would ask you to turn to Page 31 of Plaintiff's Exhibit 26.

THE COURT: You haven't offered it yet.

MR. EGAN: I'm sorry. May I offer [97] that document, your Honor?

THE COURT: All right.

MR. MCGINLEY: No objection.

THE COURT: Exhibit 26.

MR. EGAN: Thank you.

(Plaintiff's Exhibit 26 *marked in evidence.*)

Q. (By Mr. Egan) Directing your attention to what is now Plaintiff's Exhibit 26, and asking you if you will read to the members of the jury the paragraph that I just pointed out to you. A. "If the aggregate of years and months of service exceeds five, then an additional year will be added in determining your vested percentage."

I confess I don't know what it means, but perhaps you do.

Q. You know Mr. Biggins worked more than five years?

A. Yes.

Q. You know what adding five to one means; correct? It means six; right? A. Yes.

Q. As a matter of fact, when he left the company, his pension benefits were forfeited because he only had nine years and several months; is that [98] correct? A. That's my understanding.

Q. You would agree with me that if you added one, he would have in excess of ten years to that; correct? A. I don't understand this, to be honest with you.

Q. You would agree with me that if you added one to nine — A. If you add one to nine, you get ten.

Q. That's right.

Now, sir, I'm going to show you Plaintiff's Exhibit 11 and ask you if you can identify that. A. That's the famous handbook that's been —

Q. Incorporated in that is the definition of what vacation pay is at Hazen Paper Company? A. Yes.

Q. Would you explain to the Court and jury what you understand vacation pay to be at Hazen Paper Company?

A. My understanding is that vacation pay is time off — at this time, was time off without loss of pay.

In other words, if you were at the . . .

. . .

[102] THE COURT: Go ahead.

CONTINUED CROSS EXAMINATION BY MR. EGAN

Q. I'm going to ask you, Mr. Hazen, to take a look at Plaintiff's Exhibit 18 in this case.

That's a form sent from the Hazen Paper Company to the Division of Employment Security; is that correct?

A. Correct.

Q. Incidentally, as the Treasurer of Hazen Paper Company, you're familiar with the Division of Employment Security, Commonwealth of Massachusetts? A. Sure.

Q. You know that regulates benefits payable to people who are at work; correct? A. Correct.

Q. You've had in the course of your years at Hazen Paper Company routine inquiries concerning the circumstances and wages of people that you've employed? A. Yes.

Q. While I'm asking you that, you are also aware that age discrimination is illegal, aren't you? [103] A. Absolutely.

Q. And you were in 1986? A. Certainly.

Q. Now, with regard to reasons for separation on Plaintiff's Exhibit 18, you see that there are several boxes the Commonwealth allows an employer to check? A. Yes.

Q. And would you read for the jury what those boxes are?

A. Separation reason: Lack of work, voluntary quit, discharge, labor dispute, other.

Q. Now, this was signed by a Mrs. Rossmeisl on behalf of the company; isn't that correct? A. Yes.

Q. And Mrs. Rossmeisl is the comptroller of the company; is that correct? A. That's right.

Q. She worked under your supervision; is that correct?

A. Yes.

Q. And she came to you, did she not, to ask you what box she should check for Walter Biggins? A. Yes, she did.

Q. And as she testified, you were the one . . .

. . .

[105] A. That's correct.

Q. And did she keep records of accumulated vacation time for the executives? A. I would guess she — accumulated?

Q. Accumulated. A. I don't know. Accumulated?

Q. Accumulated. A. Do you mean more than one year?

Q. I mean carrying over from one year to another, sir.

A. Not that I know of.

Q. Now, sir, you offered — you testified, I believe you testified, maybe it was your cousin, about Mr. Biggins' job as a consultant with the Hazen Paper Company, sometime in the end of May of 1986? A. It was not a job, it was — it would be a consulting engagement.

Q. Consulting contract? A. Uh-huh.

Q. Okay.

And that consultant's contract, do you have such arrangements with other consultants, or did you in 1986? A. Do we have contracts with other consultants?

[106] Q. Consulting arrangements. A. Sure.

Q. And one of them is MacMeekin, the gentleman who — Mr. MacMeekin, the gentleman who testified on insurance?

A. Yes, Mr. MacMeekin.

Q. One of them is Mr. Culverson, environmental consultant? A. He wouldn't be on a retainer.

Q. He was just on an hourly basis? A. He worked on projects.

Q. Who were some of the other people that you had on retainer as consultants besides Mr. MacMeekin — did I get it right? A. That's correct.

Q. Who were some of the other people in 1986? A. Well, we had our — Sullivan and Hayes was on a small retainer.

Q. Your attorneys? A. Yes, for a yearly retainer.

Q. Who else? A. I can't think of anybody else offhand.

Q. Those individuals that you had as consultants at that time, they did not accrue any [107] benefits that an employee would accrue; isn't that correct, sir? A. That's correct.

Q. They did not accrue any time in pension? A. No, they would not get the normal employee benefits.

Q. Not accrue any health insurance benefits? A. No.

Q. Any vacation? A. That's correct.

Q. Disability insurance? A. I'm sure they charge an hourly basis, and they are a separate operation.

Q. And the arrangements that you proposed to Mr. Biggins or suggested to Mr. Biggins with regard to his consulting, did you clear that with your cousin Mr. Robert Hazen? A. I'm not sure whether I did or not. I mean, we are trying to negotiate an amicable separation.

Q. Incidentally, you own seventy percent of Hazen Paper? A. Correct.

Q. I believe you testified before that you try and run it with a partnership with your cousin, [108] but if push comes to shove, you own seventy percent? A. That's correct.

Q. Now, sir, you're not sure whether or not you had Robert Hazen's assent to a consulting agreement? A. This was going on on an hour-by-hour basis, and it was at this stage —

Q. Bear with me.

The question is are you sure? A. No, I'm not sure.

Q. Now, this proposal that you suggested to Mr. Biggins or offered to Mr. Biggins, whatever word you feel is appropriate, that would have required him to sign an agreement just like this employee confidentiality and patent agreement that is in as an exhibit in this case, Exhibit 10-A? A. It would have to have been a modified agreement.

We clearly understood that that would have to be modified if it —

Q. It was going to cover the same substantial — A. It was negotiable. That was negotiable. That was what we were trying to talk about.

* * *

[116] (Plaintiff's Exhibit 28 *marked in evidence.*)

Q. (By Mr. Egan) Sir, there has been some testimony that you've given about conversations that you had with Mr. Biggins concerning either stock or stock rights.

You gave some testimony about that, sir? A. I gave testimony about stock appreciation rights.

Q. And is it fair to say that you recall that at least one occasion upon which you discussed what you say are stock appreciation rights, or a stock appreciation plan with Mr. Biggins?

A. I, yes, I mentioned it to him.

Q. Is it fair also to say that on that one occasion, you recall him requesting a salary of six figures? A. It could have been the same occasion.

Q. Could there have been two occasions upon which you talked about it? A. Six figures?

Q. No, sir.

About the stock rights or whatever it is that — what do you call them, phantom rights? A. Phantom stock rights. Appreciation. [117] It's a complicated proposition.

Q. I'm sure it is.

Whatever the word is that you want to use, on two occasions? A. We probably talked about it on two occasions.

Q. On more than two occasions? A. I don't know.

Q. And on at least one occasion, you do recall a request by Mr. Biggins, saying that he felt he was entitled to a salary, to use your words, in the six figures? A. Uh-huh.

Q. And you, as I understand it, talked to your cousin about the stock, the phantom stock rights, and he was negative about that; fair statement? A. Yes.

Q. And at some time in '86, you laid that plan aside? A. I guess in '86 we had drafts of it, even — no, I don't know when the last drafts were looked at. Could have been '86, '87.

Q. When was it in '86 that you laid the plan aside?

* * *

... [120] Q. And when was it that you first saw, or first got the W.F. Biggins brochure? A. Late April.

Q. All right.

Now, what did you do to make sure that Timothy, independent of telling his father, what did you do to make sure that Timothy Biggins was not going to be on the program?

A. Well, Mr. Biggins had —

Q. Just bear with me.

What did you do? A. What did I do, I called Mr. Fuller. And I told him it was an embarrassment to our company to put the program on.

Q. Mr. Fuller is the gentleman who testified here yesterday? A. That's right. Yes.

Q. Now, did you say sometime in your deposition that it would be untruthful and dishonest — excuse me, let me withdraw that — it would be borderline unethical if Mr. Biggins went to work for one of your competitors after he left your company; do you recall saying that? A. I think I did.

Q. Would you tell the Court and jury from ...

* * *

[123] REDIRECT EXAMINATION BY MR. MCGINLEY

Q. Mr. Hazen, you were shown a few moments ago by Mr. Egan, this is I think Plaintiff's Exhibit 27. It's Pier 4, Pier 5 that is talked about; do you recall that? A. Yes.

Q. Anything in there that says "Biggins acrylic"? A. No, it says Biggins Pier 4. Pier 5.

Q. Exhibit 28, which Mr. Egan just gave you a few moments ago, the EPA regulations and progress on water-based coating, is there anything in that that says "Biggins acrylic"? A. No.

Q. Now, with respect to the summary plan description for the retirement program that you were shown this morning

before lunch, you indicated that you didn't understand that plan very well, or that summary; is that correct? A. Correct. There are sentences that are not very understandable.

Q. But are you an expert in pension and retirement plans?

A. No, I'm not. I depend on an outside [124] expert.

Q. Who do you depend on? A. Pension Associates, here in Springfield.

Q. Pardon? A. They are here in Springfield.

Q. Is it a private organization? A. Correct. They are among others, I thought as an afterthought, they are a consulting firm who we retain in the same manner that we retain Sullivan and Hayes.

Q. Now, in the course of this litigation, did Mr. Biggins and Mr. Cahillane visit with Pension Associates at your request in order to discuss the pension? A. That's correct.

These questions have come up before. And we asked Mr. Massidda, the principal of Pension Associates, to get together with the Plaintiff and work out any problems, and certainly our intent is to abide completely by the letter of the law.

Q. Did you ever hear any complaint from Mr. Biggins or Mr. Cahillane about this plan until today? A. Not until today.

MR. EGAN: Objection.

THE COURT: May answer.

* * *

[126] . . . a moment ago that you initially gave an approval for Tim Biggins to give a presentation at the API meeting? A. That's correct.

Q. To whom did you give the approval? A. I gave it at that time to Mr. Walter Biggins.

Q. Under what circumstances? A. Well, it was during the workday and I was in my office and Walter came in, and I had a lot of other things on my mind, and he said this was subsequent to my having shown him the brochure and raised the issue with him my concerns about the company — about W.F. Biggins, Incorporated, and his association with it.

But he, at the time he came in, he said my son has already gotten an engagement through Eric Fuller with the API, American Paper Institute, Coated and Decorative Group, to give a presentation on his consulting business.

It's already arranged, do you have any objection to him continuing in that?

My reaction was that I told him that geez, I'm not happy about this, your son with this company, and I don't think it's good.

[127] He said well, Eric's planning on this, it's all planned. It's going to be difficult to change it.

I said okay.

I was thinking, I guess, that we would work out a confidentiality agreement and he would sever his relationship with W.F. Biggins, and they will change the name of the firm, and I was busy and I had other things on my mind.

That evening, I had time to think about it. God, what could I possibly be thinking of to let this happen? Tim Biggins is going to go to this meeting, which my competitors are going to be present, and my other employees, and he's going to make a presentation under the banner of his father, W.F. Biggins. And he's going to hand out brochures that say W.F. Biggins on them.

I said I can't possibly let this go. I'm sending a message to my competitors one, that they can do business with employees of mine. And I'm sending the message to employees that it's all right to do this kind of consulting work with the competitors.

And that's what I wrote in the note, and said I had second thoughts.

* * *

[July 20, 1990, Volume V, p 76] . . . nature of the employer's reason, then you should hold the employer liable to the Plaintiff.

If Plaintiff has not proven the employer's statement to be pretextual, then you should find in favor of the Defendants on the age discrimination count.

If you find that the Plaintiff prevails on his claim for age discrimination, you must also determine whether the Defendants' violation of the Age Discrimination in Employment Act is willful.

The question of willfulness is important because if you find that the violation was willful, the Court will award to Plaintiff money damages in addition to those awarded by you.

I will now instruct you on the meaning of willfulness.

Under the Federal law, an act is done willfully if done voluntarily and intentionally, and with a specific intent to do something the law forbids.

You may find that Defendants willfully violated the age discrimination law if you find that one, that Defendants knew of or showed reckless disregard for, the law prohibiting age discrimination.

[77] And two, that Defendants, with bad purpose, intentionally disobeyed or ignored the law.

In sum, if you find in Plaintiff's favor on the age discrimination claim, you must also decide whether the Plaintiff proved by a preponderance of the evidence that the violation was willful. You should not award any damages for the willfulness of the violation itself. You need only decide whether the violation of the age discrimination law is willful.

Now, Plaintiff's claim for pension benefits under the Employee Retirement Income Security Act, called ERISA.

Plaintiff also alleges that the Defendants terminated Plaintiff's employment with the purpose of preventing Plaintiff from vesting in his pension benefits. Plaintiff alleges that he would have become entitled to pension benefits within a short period of time, but that Defendants fired him before his benefits could vest. Plaintiff alleges that this conduct constitutes violation of ERISA, a Federal pension law. ERISA stands for Employee Retirement Income Security Act.

ERISA prohibits employers from purposefully taking action that interferes with an . . .

. . . .

PLAINTIFF'S TRIAL EXHIBIT 7

Usage of Acrylic Foil Vehicle

1979 Through 1985

| Year | * Lbs. of Base Resin Used | Estimated Press-Ready Acrylic Used | Dollar Value of (\$.40 per lb) Coatings - '89 Prices |
|------|---------------------------|------------------------------------|---|
| 1979 | 492 LBS. | 1,653 LBS. | \$ 661 |
| 1980 | 3,940 LBS. | 11,041 LBS. | 4,416 |
| 1981 | 11,000 LBS. | 33,484 LBS. | 13,393- |
| 1982 | 27,882 LBS. | 84,872 LBS. | 33,948 |
| 1983 | 61,671 LBS. | 187,724 LBS. | 75,089 |
| 1984 | 76,482 LBS. | 232,808 LBS. | 93,123 |
| 1985 | 76,537 LBS. | 232,976 LBS. | 93,190 |
| 1986 | 141,110 LBS. | 429,533 LBS. | 171,813 |

* Lbs. Zinpol 1,519 + Ottapol 20 - 35 Purchased

PLAINTIFF'S TRIAL EXHIBIT 10

MEMO

TO: Walter Biggins

DATE: May 30, 1986

REF: Employee Confidentiality
Agreement

Per our discussion, please review and sign the attached agreement. We'd like to have this back by or before June 9.

We cannot tolerate the kind of outside activity in areas directly relating to the business of Hazen Paper Company that you have been involved in for several years. We regard it as unethical and completely unacceptable. We trust that the agreement attached spells out clearly what we expect and that you will abide by it completely while carrying out the regular duties and responsibilities of the job of Technical Director.

With respect to the practical matter of disassociating from your consulting firm, we expect you to accomplish this by September 1. Specifically, we expect you to change the name of the firm, relinquish your ownership and control of the firm, and remove yourself from any duties of or responsibilities to the firm.

Very truly yours,

THOMAS N. HAZEN

ROBERT B. HAZEN

EMPLOYEE CONFIDENTIALITY/PATENT AGREEMENT

This Agreement is made by and between HAZEN PAPER COMPANY, hereinafter called "Hazen" and _____, hereinafter called "Employee."

Hazen and Employee agree as follows:

1. *Discoveries, Inventions, and Improvements by Employees*
Employee will promptly report to Hazen all discoveries, inventions, or improvements of whatsoever nature conceived or made by him within the scope of and during the period of his employment by Hazen. All such discoveries, inventions, and improvements which are applicable in any way to Hazen's business shall be the sole and exclusive property of Hazen. These obligations shall continue beyond the termination of the period of employment with respect to discoveries, inventions, or improvements conceived or made by the Employee during such period of employment, and shall be binding upon his heirs, executors, assigns, or other legal representatives.
2. *Maintenance of Trade Secrets and Confidential Information*
Employee recognizes that as a result of his employment by Hazen he has or may develop, obtain, or learn about trade secrets or confidential information which is the property of Hazen or which Hazen is under an obligation not to disclose, and Employee agrees to use his best efforts and utmost diligence to guard and protect said trade secrets and confidential information, and Employee agrees that he will not during or after the period of his employment by Hazen use for himself or others or divulge to others any of said trade secrets or confidential information which he may develop, obtain, or learn about during or as a result of his employment by Hazen, unless authorized to do so by Hazen in writing. Employee further agrees that if his

employment with Hazen is terminated for any reason, he will not take with him, but will leave with Hazen, all records and papers and all matters of whatever nature which contain said trade secrets or confidential information. For purposes of this Agreement, the terms "trade secrets" and "confidential information" include processes, methods, techniques, systems, formulas, patterns, models, devices, compilations, procedures, lists of customers, or any information of whatsoever nature which gives Hazen an opportunity to obtain an advantage over its competitors who do not know or use it, but it is understood that said terms do not include knowledge, skills, or information which is common to the trade.

3. *Execution of Documents*

Whenever requested by Hazen, whether during or subsequent to his employment by Hazen, Employee agrees to execute any documents or papers which Hazen may deem necessary for the protection of its interests in said discoveries, inventions, improvements, innovations, trade secrets, and confidential information, including written assignments of inventions, patents, and patent applications.

4. *Interest of Employee*

As to inventions, applications for patents, and copyrightable material in which Employee presently holds an interest and which are not subject to this Agreement:

Check one: ☐ Employee has no such property
☐ Employee has attached separate Schedule describing all such property

5. *Conflicts of Interest*

Hazen expects and the Employee agrees to devote his full time and best efforts to the business of the company and

agrees not to take any other job either as an employee or a consultant of another business during the time of his employment with Hazen without Hazen's prior written permission. Permission will not be granted if Hazen, in its sole discretion, determines that such other employment creates a conflict or potential conflict of interest with Hazen's present or future business; and provided further, Hazen reserves the right to withdraw such permission should circumstances change.

6. Upon termination of employment of the Employee for any reason whatsoever, the Employee agrees for a period of two (2) years not to directly or indirectly engage in business competitive with Hazen's business wherever Hazen had conducted business during the term of the Employee's employment, provided, however, that for the purposes of this paragraph only, business of Hazen shall mean business substantially similar to that in which the Employee was involved or engaged during his term of employment.

7. *Consideration*

The covenants herein set forth which are made by Employee are in consideration of and as a part of the terms of employment or continuation of employment, as the case may be, of the Employee by Hazen.

Signed on behalf of Hazen and Employee this ____ day of _____, 19 ____.

Employee

HAZEN PAPER COMPANY

By _____

B052886-46(25)

Title _____

PLAINTIFF'S TRIAL EXHIBIT 11

. . .

YOU ARE ASSURED OF EQUAL OPPORTUNITY

Hazen Paper Company is an Equal Opportunity Employer. We provide equal employment opportunities without regard to race, color, creed, national origin, sex, marital status, or age. This pledge applies to all employees and applicants for employment in connection with: hiring, placement, upgrading, transfer or demotion; treatment during employment; rates of pay or other forms of compensation; selection for training, layoff, or termination.

WE ALL START WITH A "GET ACQUAINTED" PERIOD

Every new employee begins employment with a "get acquainted" period that lasts 90 calendar days. This period gives you a chance to learn about Hazen Paper and gives Hazen Paper a chance to learn about you. We use this time to make sure you can handle your work satisfactorily and that your abilities are being properly applied.

Your supervisor will meet with you periodically during this period. You will be told how you are doing and what you can do to make further progress.

At the end of the 90 day period, your performance will be reviewed and if it is deemed satisfactory, you will become a regular employee.

Feel free to ask questions or seek help from your foreman during this period — or at any time during your employment. Your foreman will be glad to help you.

. . .

PLAINTIFF'S TRIAL EXHIBIT 17

. . .

HAZEN PAPER COMPANY — HOLYOKE, MASSACHUSETTS

NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 1987

6. *Employee Stock Bonus Plan:*

Hazen Paper Company instituted a noncontributory employee stock bonus plan effective December 31, 1975. All full time employees over the age of 23 who have worked for the company at least six months are eligible to join the plan. Benefits under the plan depend on the nature of separation from the company, the age of the employee at the time of separation and the length of the employee's vested service in the plan. The form and amount of contributions to the plan is at the discretion of the board of directors of the Company.

No contributions to the plan were approved for 1987 and 1986.

In December, 1987 the Company repurchased all preferred stock from the plan at par value. All funds in the plan after repurchase of the stock plus prior years employee contributions to the pension plan were placed in separate accounts for each employee under the 401(K) retirement plan portion of the stock bonus plan. Commencing January, 1988 employees may make contributions to their 401(K) accounts. Employee contributions to the 401(K) plan will be matched by the company at the rate of 10%.

7. *Income Taxes:*

The following is a reconciliation of the provision for taxes on income at the applicable statutory income tax rates to the tax provision in the financial statements:

| | 1987 | 1986 |
|---|------------------|------------------|
| <i>Taxes Currently Payable:</i> | | |
| Provision at statutory rate | \$826,516 | \$497,334 |
| Investment and other tax credits | (10,700) | (21,095) |
| Tax savings related to FSC income | | (14,703) |
| Miscellaneous tax adjustments | 356 | 6,649 |
| Deferred tax related to depreciation | (73,231) | (99,841) |
| <i>Net Taxes Currently Payable</i> | 742,941 | 368,344 |
| <i>Deferred Taxes:</i> | | |
| Related to depreciation | | 99,841 |
| <i>Total Federal and State Taxes per Statements</i> | <u>\$742,941</u> | <u>\$468,185</u> |

Deferred tax liability, as discussed in Note 9, is not recognized beginning in 1987.

* * *

PLAINTIFF'S TRIAL EXHIBIT 18

JOB INSURANCE

REQUEST FOR SEPARATION AND WAGE INFORMATION - NEW CLAIM
RETURN COMPLETED FORM TO:

Commonwealth of Massachusetts
Division of Employment Security
136 Worthington St, PO Box 640
Springfield MA 01101

| | | |
|-------------------------|------------------------------------|------------------------------|
| Seq 001 | Social Security No. 030-12-8123 | Date of Claim 06-22-86 |
| Filing Date 06-25-86 | Mailing Date 06-26-86 | Sex M |
| 05-29-25 | IP Y | Employer ID No. 00-307130 |

| | |
|----------------------------|---------------------------|
| CLAIMANT NAME AND ADDRESS: | EMPLOYER NAME AND ADDRESS |
| Walter F. Biggins | Hazen Paper Co. |
| 52 Redfern Dr. | Foot of Jackson Street |
| Longmeadow, MA 01106 | Post Office Box 189 |
| | Holyoke MA 01401 |

PART I

A. PERIOD LAST EMPLOYED: FROM _____ THROUGH _____

B. SEPARATION REASON:
Voluntary Quit

C. SEPARATION IS:
Permanent

D. GROSS WAGES PAID DURING 52 WEEK BASE PERIOD

| Quarterly Periods | Gross Wages Paid | Date Started | Date Stopped |
|-------------------------|--------------------------|--------------|--------------|
| From To | | | |
| 06/23/85 06/30/85 | \$ paid on monthly basis | | |
| Qtr. Ending 09/30/85 | \$17,256.00 | 07/1/85 | 09/30/85 |
| Qtr. Ending 12/31/85 | \$17,556.00 | 10/1/85 | 12/31/85 |
| Qtr. Ending 03/31/86 | \$23,656.00 | 01/1/86 | 03/31/86 |
| 04/01/86 06/21/86 | \$19,336.00 | 04/1/86 | 06/21/86 |
| TOTAL PAID | \$77,804.00 | | |

Signature: s/ Rossmeisl
Date: June 30, 1986

Title: Controller
Tel: (413) 538-8204

PLAINTIFF'S EXHIBIT 25

HAZEN PAPER COMPANY

EMPLOYMENT AGREEMENT

1. Hazen Paper Company agrees to employ Timothy McDonald as Technical Director and Timothy McDonald agrees to work exclusively for the Hazen Paper Company. In entering this Employment Agreement, both parties desire that the relationship between Mr. McDonald and the Hazen Paper Company will be mutually beneficial with both parties growing together and the employee working until the normal age of 65.

It is understood, however, that circumstances change and that one or both of the parties may wish to terminate it. The employee may terminate the agreement by giving 60 days written notice or in accordance with the provisions of Article #4. The Company may terminate the Agreement with 100 days written notice or in accordance with the provisions of Article #4.

2. *Duties:*

Timothy McDonald will be employed as Technical Director. The duties and responsibilities of the Technical Director are spelled out in the attached Job Description. (Appendix A). These duties may be further defined and amended from time to time, by mutual agreement.

3. *Extent of Service and Conflicts of Interest:*

The the [sic] employee will devote all his working time, attention and energies to the interest of Hazen Paper Company and agrees not to take any other job either as an employee or a consultant of another business without Hazen's prior written permission. Permission will not be granted if Hazen, in its' sole discretion, determines that such other employment creates a conflict or potential conflict of interest with Hazen's present or

future business; and provided further, Hazen reserves the right to withdraw such permission should circumstances change.

4. *Compensation and Benefits:*

Hazen Paper Company will, in consideration for the services to be rendered by the employee hereunder, compensate the employee in the manner set forth in Appendix B attached hereto.

5. *Termination Without Notice:*

Timothy McDonald may *not* terminate his employment with Hazen Paper Company without notice as outlined in Section I. unless;

A. Hazen materially breaches the terms of this contract. His employment will, of course, be terminated by his death.

Hazen Paper Company may not terminate Timothy McDonald's employment without notice as outlined in Section I during the employment term, unless;

A. The employee materially breaches the terms of this contract.*

B. Unless, the company pays a cash settlement equivalent to 100 days pay.

C. Unless, the Company gives the employee six (6) months written notice on the occasion of the employee becoming permanently disabled.

In the event one of the parties gives written notice as provided in Section I, the other party may elect to terminate the Agreement immediately.

*The employee's Job Description is considered a part of this contract. The employee's unwillingness or inability to perform this job as outlined would be considered a breach of this contract but the company would be required to formally review, at least twice, the employee's deficiencies in performance, giving him a reasonable chance to correct them before this would be considered a valid reason for termination without notice.

6. *Non-Competition:*

Upon termination of employment of the Employee for any reason whatsoever, the Employee agrees, for a period of six (6) months not to directly or indirectly engage in business competitive with Hazen's business wherever Hazen has conducted business during the term of the Employee's employment, provided, that for the purposes of this paragraph only, business of Hazen shall mean business substantially similar to that in which the Employee was engaged or involved during his term of employment. Selling similar products or rendering similar services to Hazen's customers or otherwise interfering with Hazen's relationship with its' customers would clearly fall into this definition of competition, but this does not exclude other possible types of competitive activity that might be covered by this agreement.

7. *Discoveries, Inventions and Improvements:*

Employee will promptly report to Hazen all discoveries, inventions, or improvements of whatsoever nature conceived or made by him within the scope of and during the period of his employment by Hazen. All such discoveries, inventions, and improvements which are applicable in any way to Hazen's business shall be the sole and exclusive property of Hazen. These obligations shall continue beyond the termination of the period of employment with respect to discoveries, inventions, or improvements conceived or made by the Employee during such period of employment, and shall be binding upon his heirs, executors, assigns, or other legal representatives.

8. *Maintenance of Trade Secrets and Confidential Information:*

Employee recognizes that as a result of his employment by Hazen Paper Company, he has or may develop, obtain, or learn about trade secrets or confidential information which is the property of Hazen or which Hazen is under obligation not to disclose, and Employee agrees to use his best efforts and

utmost diligence to guard and protect said trade secrets and confidential information which he may develop, obtain or learn about during or as a result of his employment by Hazen, unless authorized to do so by Hazen in writing. These obligations in respect to "Trade Secrets" and "Confidential Information" shall continue beyond the termination of his employment and will be binding on his heirs, executors, assigns or other legal representatives. Employee further agrees that if his employment with Hazen is terminated for any reason, he will not take with him, but will leave with Hazen, all records and papers and all matters of whatever nature which contain said trade secrets or confidential information. For purposes of this Agreement, the terms "trade secrets" and "confidential information" include processes, methods, techniques, systems, formulas, patterns, models, devices, compilations, procedures, lists of customers, information about products and services Hazen provides to its customers, price and cost information, or any information of whatsoever nature which give Hazen an opportunity to obtain an advantage over its competitors who do not know or use it, but it is understood that said terms do not include knowledge, skills, or information which is common to the trade.

9. *Execution of Documents:*

Whenever requested by Hazen, whether during or subsequent to his employment by Hazen, Employee agrees to execute any documents or papers which Hazen may deem necessary for the protection of its interest in said discoveries, inventions, improvements, innovations, trade secrets, and confidential information, including written assignments of inventions, patents, and patent applications.

10. *Interest of Employee:*

As to inventions, applications for patents, and copyrightable material in which Employee presently holds an interest and which are not subject to this Agreement:

check one:

- ☒ Employee has no such property.
☐ Employee has attached separate Schedule describing all such property.

11. *Benefit:*

This Agreement shall be binding upon and insure to the benefit of the successors to the parties and may not be assigned by any party thereto without the prior written consent of the others.

12. *Applicable Law:*

This Agreement shall be interpreted and construed in accordance with the laws of the State of Massachusetts.

13. *Arbitration:*

Any dispute among the parties hereto as to the interpretation or application of the provisions of this Agreement shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association.

14. *Entire Agreement:*

This Agreement constitutes the entire agreement among the parties with respect to the employment of the Employee by Hazen.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the first date above written.

HAZEN PAPER COMPANY:

By: s/ THOMAS N. HAZEN

Employee: s/ TIMOTHY R. McDONALD

DATE: *September 15, 1986*

PLAINTIFF'S TRIAL EXHIBIT 26

SUMMARY PLAN DESCRIPTION
 FOR THE
 HAZEN PAPER COMPANY
 RETIREMENT PROGRAM

Prepared by:

PENSION ASSOCIATES, INC.
 1243 Main Street
 Springfield, MA 01103

Telephone: (413) 781-1261

Paula Martin

May, 1981

SECTION 7

Benefits in Event of Termination of Employment

Vesting

First of All, What Does "Vesting" Mean?

"Vesting" is your right to a future benefit under the Plan. Once you are vested, it means that the benefits you have earned under the Plan are "non-forfeitable"; and, therefore, cannot be taken away from you if you live to your Retirement Date — even if you quit or are fired.

When Am I Vested?

1. *When You Reach Your Normal Retirement Date — Age 65*
 You will be automatically 100 % vested in your Earned Pension at Age 65 regardless of your years of Credited Service provided you are a participant in the Plan at Age 65 and were hired prior to your 60th birthday.

2. *When You Qualify for Early Retirement*

Your Earned Pension is automatically 100% vested if you leave employment after qualifying for Early Retirement . . . after completing 10 years of Credited Service and attaining Age 60.

3. *When You Have Completed Ten Years of Credited Service*

After you have completed 10 years of Credited Service, your Earned Pension is vested. Therefore, if you should terminate your employment, voluntarily or involuntarily, at any time after completing 10 years of Credited Service, you will be 100% vested in your Earned Pension and, therefore, have a non-forfeitable right to a future benefit.

When Would I Not Be Vested?

If you terminate employment before Age 65 with less than 10 years of Credited Service, you will not receive any benefit under this Plan.

DEFENDANTS' TRIAL EXHIBIT F

ARE YOU FAMILIAR WITH THE
RIGHT TO KNOW LAW?

We Can Help You To Understand
It Better And To Comply With It.

W.F. Biggins Associates, Inc.
52 Redfern Drive
Longmeadow, MA 01106
413-567-7890

What W.F. Biggins Associates, Inc. Will Do For You:

1. Conduct a plant audit.
2. Obtain all MSDS from suppliers and file with the DEQE and the Municipal Coordinator.
3. Furnish and instruct the proper use of required labels.
4. Train all employees annually.
5. Train all new employees within 30 days of hiring date.
6. Keep permanent records of training dates of all employees.
7. Maintain a file of all MSDS for 30 years.
8. Update the MSDS and file semi-annually.
9. Obtain the MSDS, upon notification, when a new substance is used.
10. Act as the contact person, if desired.
11. Provide legal testimony, if desired.

12. Provide a central life and legal notification for posting in the workplace.
13. Provide a copy of MSDS upon employee or Municipal Coordinator request.

W.F. Biggins Associates, Inc.

Training Is Supervised By A Department Of Labor And
Industries Registered Trainer

DEFENDANTS' TRIAL EXHIBIT C

March 21, 1988

DUN & BRADSTREET, INC.

Be Sure Name, Business and
Address Match Your File

Answering Inquiry

Subscriber [Illegible]

Original Report

Substitute For Report Of Even Date

DUNS: 18-505-0465
Biggins, W.F. Associates, Inc.
52 Redfern Dr
(Longmeadow)
Springfield, MA 01106
Tel: 413 567-7980

Date Printed
Mar 16 1988

Business Consulting
Sic No.
73 92

Summary

| | |
|----------|------------------|
| Rating | ER8 |
| Started | 1986 |
| Payments | See Below |
| Sales | \$100,000 (Proj) |
| Worth F | \$(2,542) |
| Employs | 3 |
| History | Clear |

Chief Executive: Walter F. Biggins, Pres.

Payments (Amounts may be rounded to nearest figure in prescribed ranges)

| Reported | Paying Record | High Credit | Now Owes | Past Due | Selling Terms | Last Sale Within |
|----------|------------------|----------------|-------------|-------------|------------------|---------------------|
| 03/88 | Ppt | 750 | -0- | -0- | N30 | 1 Mo |
| 03/88 | Ppt | 2500 | -0- | -0- | N30 | |
| 03/88 | Ppt | 500 | -0- | -0- | N30 | |

* Each experience shown represents a separate account reported by a supplier. Updated trade experiences replace those previously reported.

Finance

- * A financial spread sheet of comparatives, ratios, and industry averages
- * May be available. Order a DUNS financial profile via your Dunsprint
- * Terminal or by calling DUNS dial at 1-800-DNB-DIAL.

03/11/88 Fiscal statement dated OCT 31, 1987:

| | | | |
|--------------|-------|-------------------|----------|
| Cash | \$ 0 | Accts Pay | \$ 1,931 |
| | | Officer Loan | 8,226 |
| Curr Assets | 0 | Curr Liabs | 10,157 |
| Fixt & Equip | 8,271 | CAPITAL STOCK | 1,000 |
| Deposits | 346 | RETAINED EARNINGS | (2,542) |
| Total Assets | 8,615 | Total | 8,615 |

Annual sales \$64,220; operating expenses \$65,743. Net income \$(2,442).

Submitted MAR 11 1988 by Walter F. Biggins, president. Prepared from statement [illegible] by Accountant Owen Sutton. Extent of audit, if any, not indicate[d].

—0—

On MAR 11 1988 Walter F. Biggins, president, submitted the above figure[s.]

He submitted the following partial estimates dated MAR 11 198[8.]

Cash \$11,000 Accts Pay \$25,000 Accts Rec \$2,000
Projected annual sales are \$100,000.

On MAR 11, 1988 management stated that subject will be relocating to commerc[ial] space. Apr. 1, 1988, new address will be The Mill (Dwight St), Holyoke, [MA.]

HISTORY

03/11/88

WALTER F. BIGGINS, Pres.

Director(s): The Officer(s)

Incorporated Massachusetts Mar 19 1986. Authorized capital consists of [...] shares common stock, no par value.

Business started 1986 by Walter F. Biggins. 100 % of capital stock is owned [...] officer. Starting capital \$5,500 derived from \$5,500 savings.

WALTER F. BIGGINS born 1925. 1986 started here. 1976-1986 Hazen Paper Compa[ny,] Holyoke, MA, technical director. 1966-1976 C H Dexter, Windsor Locks, CT, prod[uct] development. 1955-1966 Ludlow Corp, Needham, MA, quality control.

OPERATION

See Reverse Side For Glossary Of Terms (Continued)

This report furnished pursuant to contract for the exclusive use of the subscriber as one factor to consider in connection with C&E Insurance marketing or other business decisions. Contains information compiled from sources which Dun & Bradstreet, Inc. does not control whose information unless otherwise ILLEGIBLE in the report has not been verified in furnishing this report Dun & Bradstreet, Inc. in no ... or timeliness of the information provided.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Caption Omitted]

DEFENDANTS' MOTION FOR A DIRECTED VERDICT

All of Plaintiff's evidence having been introduced, Defendants Hazen Paper Company, by its attorneys, hereby moves the Court, pursuant to Rule 50(a) of the Federal Rules of Civil Procedure, to direct a verdict in Defendants' favor as to each Count in this action on the following grounds:

1. Plaintiff has not only clearly articulated, but amply documented a legitimate, non-discriminatory reason for Plaintiff's termination — his refusal to sign a reasonable confidentiality agreement drafted by his employer in response to his disloyal and unethical conduct. *Loeb v. Textron, Inc.*, 600 F.2d 1003, 1011-12 (1st Cir. 1979). In the face of this proffer, Plaintiff has failed to present any evidence of pretext which could persuade a reasonable trier of fact that he was the victim of age discrimination. No evidence has been introduced indicating a pattern, much less a single instance of disparate treatment involving an older Hazen employee which would tend to prove that Plaintiff himself was the victim of discrimination. *Medina Munoz v. R.J. Reynolds*, 896 F.2d 5, 10 (1st Cir. 1990). The evidence leads inexorably to the conclusion that Plaintiff was singled out not because of his age but because of Hazen's discovery of Plaintiff's extensive history of double dealing and betrayal.

Plaintiff's sole evidence of discrimination is alleged remarks made in passing by the Defendants. Such evidence, when compared to the overwhelming evidence of disloyalty presented by the Defendants, cannot persuade a reasonable trier of fact that Plaintiff's age was the "determinative" reason for his termination. *Loeb*, 600 F.2d at 1019.

2. Apart from Plaintiff's own suspect opinion as to how "far" he was away from achieving vested status in Hazen's pension plan, no evidence has been introduced establishing the requisite "specific intent" to deprive Plaintiff of his benefits in violation of ERISA. *Gavalik v. Continental Can Co.*, 812 F.2d 834 (3d Cir. 1987). Plaintiff's evidence of an ERISA violation consists exclusively of this "temporal" evidence — he was "some time away" from being vested in his pension. Such evidence is plainly insufficient. *Donohue v. Custom Management Corp.*, 634 F.Supp. 1190, 1197 (N.D. Pa. 1986). The evidence clearly indicates that Plaintiff's unethical conduct, not an illegitimate reason in violation of ERISA, was the "motivating" factor behind his dismissal. *Gavalik*, 812, F.2d 834.

3. Plaintiff has failed to present any evidence which could persuade a reasonable trier of fact that he is the owner of Hazen's water-based acrylic. Plaintiff has essentially conceded that the development of the water-based acrylic was within the scope of his employment duties while he was Technical Director of Hazen. The evidence shows unequivocally that the development of new products, such as the water-based acrylic, was encompassed by the job description he was given by his employer. In these circumstances, Hazen is the lawful owner of the acrylic. *Solomons v. United States*, 137 U.S. 342 (1890); *National Development Company v. Gray*, 316 Mass. 240, 55 N.E.2d 783 (1944).

4. The evidence clearly shows that no definitive promise of stock was ever made by Hazen to Plaintiff. Plaintiff's own testimony indicates that any alleged stock discussions were conditional and, therefore, did not rise to the level of an objective manifestation of intent necessary for contract formation.

Further, no evidence has been introduced that would lead a reasonable finder of fact to conclude that Plaintiff was the victim of fraud. There is no evidence that Plaintiff suffered detriment or damage in reliance upon a promise made by Hazen, and that such promise was made to induce Plaintiff's reliance. *Slang v. Westwood*, 366 Mass. 688, 322 N.E.2d 768 (1875). Accordingly, Defendants' directed verdict should be granted.

5. Because the evidence presented shows unequivocally that Defendants, not Plaintiff, is the lawful owner of the water-based acrylic, Defendants cannot be liable for its conversion. Further, because Plaintiff has conceded that Defendants contributed material and equipment toward the development of the acrylic, Defendants could lawfully use the acrylic and cannot be liable for its conversion under the Shop Right doctrine. *National Development v. Gray*, 316 Mass. at 247, 55 N.E.2d at 787 (1944).

6. Plaintiff's case is devoid of any evidence that he was deprived of a legally protected right through "threats, intimidation and coercion" in violation of the Massachusetts Civil Rights Law. *Bell v. Mazza*, 394 Mass. 176, 179-80 (1985). Absent any evidence of threats, intimidation or coercion on the part of the Defendants, a directed verdict is warranted.

7. As a matter of law, Plaintiff has failed to show that he had an implied or express contract with Defendants based on Defendants' personnel manual and policies. Plaintiff has not shown that he ever entered into negotiations with the Defendants regarding the terms and conditions of his employment. Nor has Plaintiff indicated that any term of employment was expressly stated in the manual. Nor did Plaintiff sign the manual. In the absence of such evidence, Plaintiff has failed to establish a triable issue for the jury that he was other than an em-

ployee at will. *Jackson v. Action For Boston Community Development, Inc.*, 403 Mass. 8, 525, N.E.2d 411 (1988).

Respectfully submitted,

HAZEN PAPER COMPANY

By s/ PATRICK MCGINLEY

PATRICK W. MCGINLEY, ESQ.

SULLIVAN & HAYES

Attorneys for the Defendants

1500 Main Street, Suite 1712

Springfield, Massachusetts 01115

Telephone: (413) 736-4538

Dated this 18th day of July, 1990
at Springfield, Massachusetts.

[Certificate of Service Omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Caption Omitted]

DEFENDANTS' RENEWED MOTION FOR A DIRECTED VERDICT

All evidence having been introduced in this case, Defendants Hazen Paper Company, by its attorneys, hereby renews its Motion For A Directed Verdict pursuant to Rule 50(a) of the Federal Rules of Civil Procedure. Defendants submit that because of the specific grounds articulated in its Motion For A Directed Verdict, no reasonable trier of fact could find in Plaintiff's favor as to each count in this action.

Respectfully submitted,

HAZEN PAPER COMPANY

By s/ PATRICK MCGINLEY

PATRICK W. MCGINLEY, ESQ.

SULLIVAN & HAYES

Attorneys for the Defendants

1500 Main Street, Suite 1712

Springfield, Massachusetts 01115

Telephone: (413) 736-4538

Dated this 19th day of July, 1990
at Springfield, Massachusetts.

[Certificate of Service Omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Caption Omitted]

SPECIAL VERDICT

A. *Age Discrimination in Employment*

1. Do you find by a preponderance of the evidence that defendants discriminated against plaintiff on the basis of age, in violation of the Age Discrimination in Employment Act?

☒ Yes ☐ No

(If you answered "yes" to question 1, go on to question 2. If you answered "no" to question 1, skip questions 2 and 3, and go on to question 4.)

2. What amount of money damages, if any, do you award to plaintiff as compensation for harm suffered due to defendants' violation of the Age Discrimination in Employment Act?

Five hundred sixty thousand seven hundred seventy-five \$560,775.

3. Do you find that defendants willfully violated the Age Discrimination in Employment Act?

☒ Yes ☐ No

B. *Employee Retirement Income Security Act ("ERISA")*

4. Do you find by a preponderance of the evidence that defendants fired plaintiff for the purpose of preventing plaintiff from attaining vestment of pension benefits, in violation of ERISA?

☒ Yes ☐ No

(If you answered "yes" to question 4, go on to question 5. If you answered "no" to question 4, skip question 5 and go on to question 6.)

5. What amount of money damages, if any, do you award to plaintiff as compensation for harm suffered due to defendants' violation of plaintiff's rights under ERISA?

One hundred thousand \$100,000.

C. Wrongful Discharge: Fraud

6. Do you find by a preponderance of the evidence that defendants and plaintiff had agreed that defendants would compensate plaintiff with shares of Hazen Paper Company stock?

☒ Yes ☐ No

(If you answered "yes" to question 6, go on to question 7 below. If you answered "no" to question 6, skip questions 7-10, and go on to question 11.)

7. Do you find that defendants wrongfully discharged plaintiff in order to deprive plaintiff of the promised stock compensation, in violation of Massachusetts law?

☒ Yes ☐ No

(If you answered "yes" to question 7, go on to question 8 below. If you answered "no" to question 7, skip question 8, and go on to question 9.)

8. What amount of money damages, if any, do you award to plaintiff as compensation for harm suffered due to defendants' wrongful discharge of plaintiff?

One dollar \$1.00.

9. Do you find by a preponderance of the evidence that defendants committed fraud by failing to compensate plaintiff with stock as promised, in violation of Massachusetts law?

☒ Yes ☐ No

(If you answered "yes" to question 9, go on to question 10 below. If you answered "no" to question 9, skip question 10, and go on to question 11.)

10. What amount of money damages, if any, do you award to plaintiff as compensation for harm suffered due to defendants' fraud?

Three hundred fifteen thousand, ninety eight \$315,098.

D. Declaratory Judgment

11. Do you find, by a preponderance of the evidence, that plaintiff was the inventor, developer, and sole, rightful owner of the paper coating formula and method?

☐ Yes ☒ No

(If you answered "yes" to question 11, go on to question 12. If you answered "no" to question 11, skip question[s] 12 and 13, and go on to question 14.)

E. Conversion

12. Do you find by a preponderance of the evidence that defendants converted unto themselves the paper treatment formula and method properly belonging to plaintiff, in violation of Massachusetts law?

☐ Yes ☐ No

(If you answered "yes" to question 12, go on to question 13 below. If you answered "no" to question 12, skip question 13, and go on to question 14.)

13. What amount of money damages, if any, do you award to plaintiff as compensation for harm suffered due to defendants' conversion?

_____ (in words)
\$ _____ (in figures).

F. Massachusetts Civil Rights

14. Do you find by a preponderance of the evidence that defendants interfered with plaintiff's exercise of his civil rights through the use of threats, intimidation or coercion?

☒ Yes ☐ No

(If you answered "yes" to question 14, go on to question 15. If you answered "no" to question 14, skip question 15 and go on to question 16.)

15. What amount of money damages, if any, do you award to plaintiff as compensation for harm suffered due to the violation of his civil rights?

One dollar \$1.00.

G. Breach of Employment Contract

16. Do you find by a preponderance of the evidence that plaintiff and defendants had an employment contract, express or implied?

☒ Yes ☐ No

(If you answered "yes" to question 16, go on to question 17. If you answered "no" to question 16, skip questions 17 and 18, sign and date the Special Verdict form, and tell the Marshal that you have completed your deliberation.)

17. Do you find by a preponderance of the evidence that defendants breached the employment contract by firing plaintiff?

☒ Yes ☐ No

(If you answered "yes" to question 17, go on to question 18. If you answered "no" to question 17, skip question 18, sign and date the Special Verdict form, and tell the Marshal that you have completed your deliberation.)

18. What amount of money damages, if any, do you award to plaintiff as compensation for harm suffered due to defendants breach of the employment contract?

Two-hundred sixty six thousand, eight hundred ninety seven
\$266,897.

s/ ILLEGIBLE

Foreperson

July 20, 1990

Date

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

(Caption Omitted)

JUDGMENT IN A CIVIL CASE

- ☒ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
and
- ☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED pursuant to the special verdict of the jury and memorandum and order of the Court,

1. Judgment for the Plaintiff on his claim of age discrimination with damages awarded in the amount of \$560,775.00.
2. Judgment for the Plaintiff with liquidated damages awarded by the court of \$560,775.00, based on the jury's finding of "willfulness".
3. Judgment for the Plaintiff on his claim under ERISA with damages awarded in the amount of \$100,000.00.
4. Judgment for the Plaintiff on his claims of wrongful discharge and fraud with damages awarded in the amount of \$315,099.00.
5. Judgment for the Plaintiff on his claim of interference with his civil rights under Massachusetts law with damages awarded in the amount of \$1.00.
6. Judgment for the Plaintiff on his claim of breach of the employment contract with damages awarded in the amount of \$266,897.00.

7. Interest, computed at 12% on Plaintiffs' awards on his claims of wrongful discharge, fraud, state civil rights and breach of contract, amounts to \$176,703.84, making a total award on these claims of \$758,699.84.
8. Interest, computed at 7.88%, on Plaintiff's claim under ERISA, amounts to \$19,937.51, making a total award on this claim of \$119,937.51.
9. Judgment for the Defendants on Plaintiff's request for a declaratory judgment and his claim of conversion.

Approved as to form: FRANK H. FRIEDMAN
Chief United States District Judge

August 27, 1990
Date

ROBERT J. SMITH, JR.
Clerk

s/ JOHN C. STUCKENBRUCK
(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

(Caption Omitted)

DEFENDANTS' MOTIONS FOR JUDGMENT
NOTWITHSTANDING THE VERDICT OR, IN THE
ALTERNATIVE, FOR A NEW TRIAL

Defendants, having at the close of all the evidence moved the Court to direct a verdict in its favor, which motion was denied and thereafter a verdict having been returned by the jury in favor of Plaintiff, Defendants now move the Court, pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, to have the verdict and judgment entered thereon set aside and to have judgment entered in accordance with Defendant's Motion for a Directed Verdict. Defendants do not move to set aside that portion of the verdict finding legal ownership of the water-based acrylic formula in Hazen. The specific grounds in support of this Motion are set forth and discussed in the accompanying Brief In Support Of Defendant's Motion For Judgment Notwithstanding the Verdict.

In the alternative, and if Defendant's Motion for Judgment Notwithstanding the verdict is not granted, Defendant moves that the Court, pursuant to Rule 59 of the Federal Rules of Civil Procedure, set aside the verdict and judgment entered thereon and grant Defendant a new trial for the reasons set forth in the accompanying Brief in Support of Defendant's Motion For A New Trial.

Respectfully submitted,

HAZEN PAPER COMPANY

BY s/RICHARD D. HAYES,

Richard D. Hayes, Esq.
Raymond Randall, Esq., Of Counsel
SULLIVAN & HAYES
Attorneys for Hazen Paper Company
1500 Main Street
Post Office Box 15668
Springfield, Massachusetts 01115
Telephone: (413) 736-4538
BBO #227020

[Certificate of Service Omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

(Caption Omitted)

AMENDED JUDGMENT IN A CIVIL CASE

- ☒ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- and
- ☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED pursuant to the memorandum and order of the Court entered on April 5, 1991 and special verdict of the jury.

1. Judgment for the Plaintiff on the claim of age discrimination with damages awarded in the amount of \$560,775.00. Interest, computed at the T-Bill rate of 6.46% amounts to \$114,313.43. Total award — \$675,088.43.
2. Judgment for the Plaintiff on the ERISA claim with damages awarded in the amount of \$100,000.00. Interest, computed at the T-Bill rate of 6.46% amounts to \$20,384.77. Total award — \$120,384.77.
3. Judgment for Plaintiff on claims of wrongful discharge and fraud with damages awarded in the amount of \$315,099.00.
4. Judgment for the Plaintiff on claim of breach of contract with damages awarded in the amount of \$266,897.00.
5. Interest, computed at the rate of 12% on claims of wrongful discharge, fraud and breach of contract, amounts to \$220,382.52. Total award on these claims — \$802,378.52.

6. Judgment for Defendants on Plaintiff's claim for liquidated damages.
7. Judgment for Defendants on Plaintiff's claim of interference with civil rights.
8. Judgment for Defendants on Plaintiff's request for declaratory judgment and his claim of conversion.
9. Judgment for Plaintiff with Attorneys' fees of \$175,564.57 and costs of \$9,760.07.

April 12, 1991
Date

ROBERT J. SMITH, JR.
Clerk

s/ JOHN C. STUCKENBRUCK
(By) DEPUTY CLERK